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ORIGINAL 3533

VOLUME 1

(Pages 5 to 476 Folios 3 to 1416)

L. A. No. 6567

In the Supreme Court

OF THE

State of California.

County of Los Angeles,
Plaintiff and Respondent,
vs.
Rindge Company, a Corporation, et al.,
Defendants and Appellants.

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES CO.
HON. PAUL J. MC CORMICK, JUDGE.

TRANSCRIPT ON APPEAL.

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Filed June 11, 1920, B. Grant Taylor, clerk; by ——— deputy.

STATE OF CALIFORNIA
DISTRICT COURT OF APPEAL
SECOND APPELLATE DISTRICT.
Filed March 7, 1921. ——— clerk; by ——— deputy.

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No. B 43572.

In the Superior Court

OF THE

State of California,

IN AND FOR THE COUNTY OF LOS ANGELES.

County of Los Angeles,

Plaintiff,

vs.

Rindge Company, a Corporation; May K. Rindge, a Widow; Samuel K. Rindge, Frederick H. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson, Her Husband; Hueneme, Malibu and Southern Railway, a Corporation; Hueneme, Malibu and Port Los Angeles Railway, a Corporation; Henry W. Keller, The Pacific Mutual Life Insurance Company, a Corporation; The Pacific Mutual Life Insurance Company of California, a Corporation; John One, John Two, John Three, John Four, John Five, Mary One, Mary Two, Mary Three, Mary Four, Mary Five,

Defendants.

3

COMPLAINT.

The county of Los Angeles, plaintiff in the above entitled action, complains of the defendants herein and alleges:

I.

That said county of Los Angeles is now and was at all the times herein mentioned a body politic and a political subdivision of the state of California.

That said Rindge Company is and was at all the times herein mentioned a corporation organized and existing under and by virtue of the laws of the state of California.

That said Pacific Mutual Life Insurance Company is and was at all the times herein mentioned a corporation organized and existing under and by virtue of the laws of the state of California.

That said Pacific Mutual Life Insurance Company of California is and was at all the times herein mentioned a corporation organized and existing under and by virtue of the laws of the state of California.

That the Hueneme, Malibu and Southern Railway is and was at all the times herein mentioned a corporation organized and existing under and by virtue of the laws of the state of California.

That the Hueneme, Malibu and Port Los Angeles Railway is and was at all the times herein mentioned a corporation organized and existing under and by virtue of the laws of the state of California.

That Rhoda Rindge Adamson and Merritt H. Adamson are husband and wife.

II.

That the board of supervisors of the county of Los Angeles, at a meeting thereof held on the 26th day of August, 1916, by a two-thirds vote of all the members, duly passed a resolution declaring it to be a public necessity to condemn certain lands for public purposes, and authorizing and directing the county counsel of the county of Los Angeles to institute proceedings for the condemnation of said certain lands, for a public use, namely: for public highway purposes in the county of Los Angeles, state of California, and describing the said improvement and the land necessary or convenient to be taken therefor, which said resolution is in words and figures as follows, to-wit: [Words in brackets amended by order of court, Jan. 8, 1917, Geo. B. W., deputy.]

"*In re* Malibu Road, Road District No. 4.

Resolution authorizing condemnation proceedings.

On motion of Supervisor Hinshaw, duly seconded and unanimously carried, it is ordered that the following resolution be and the same is hereby adopted.

Whereas, the public necessity and interest of the people of the county of Los Angeles do require that a certain highway be constructed in

said county over and across those certain parcels of real property hereinafter described, and for that purpose and for such public use it is necessary that those certain pieces or parcels of real property hereinafter described be acquired by said county by condemnation namely: the following described property located in the county of Los Angeles, state of California, to-wit:

(Description.)

Also the following described parcels of land, being in division 1 of said Malibu Road as shown on said county surveyor's map No. 8070 on file in the office of the surveyor of Los Angeles county.

Parcel No. 1.
(Description.)

Parcel No. 2.
(Description.)

Parcel No. 3.
(Description.)

Parcel No. 4.
(Description.)

Parcel No. 5.
(Description.)

Parcel No. 6.
(Description.)

Parcel No. 7.
(Description.)

Parcel No. 8.
(Description.)

Parcel No. 9.
(Description.)

Parcel No. 10.
(Description.)

Parcel No. 11.
(Description.)

Parcel No. 12.
(Description.)

Parcel No. 13.
(Description.)

Parcel No. 14.
(Description.)

Parcel No. 15.
(Description.)

Parcel No. 16.
(Description.)

Parcel No. 17.
(Description.)

Parcel No. 18.
(Description.)

Parcel No. 19.
(Description.)

Parcel No. 20.
(Description.)

Parcel No. 21.
(Description.)

16 Parcel No. 22.
(Description.)

Parcel No. 23.
(Description.)

Parcel No. 24.
(Description.)

Parcel No. 25.
(Description.)

Parcel No. 26.
17 (Description.)

Parcel No. 27.
(Description.)

Parcel No. 28.
(Description.)

Parcel No. 29.
(Description.)

Parcel No. 30.
(Description.)

18 Parcel No. 31.
(Description.)

Parcel No. 32.
(Description.)

Parcel No. 33.
(Description.)

Parcel No. 34.
(Description.)

Parcel No. 35.
(Description.)

19 Also the following described parcels of land, being in division 1 and division 2, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 36.
(Description.)

Parcel No. 37.
(Description.)

Also the following described parcels of land,
20 being in division 2, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 38.
(Description.)

Parcel No. 39.
(Description.)

Parcel No. 40.
(Description.)

21 Parcel No. 41.
(Description.)

Parcel No. 42.
(Description.)

Parcel No. 43.
(Description.)

Parcel No. 44.
(Description.)

Parcel No. 45.
(Description.)

Parcel No. 46.
(Description.)

Also the following described parcels of land, being in division 3, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 47.
(Description.)

Parcel No. 48.
(Description.)

Parcel No. 49.
(Description.)

Parcel No. 50.
(Description.)

Parcel No. 51.
(Description.)

Parcel No. 52.
(Description.)

Parcel No. 53.
(Description.)

Parcel No. 54.
(Description.)

Parcel No. 55.
(Description.)

Parcel No. 56.
(Description.)

Parcel No. 57.
(Description.)

Parcel No. 58.
(Description.)

Parcel No. 59.
(Description.)

Parcel No. 60.
(Description.)

Parcel No. 61.
(Description.)

Parcel No. 62.
(Description.)

Parcel No. 63.
(Description.)

Parcel No. 64.
(Description.)

Parcel No. 65.
(Description.)

Parcel No. 66.
(Description.)

Parcel No. 67.
(Description.)

Also the following described parcels of land, being in division 4, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 68.
(Description.)

Parcel No. 69.
(Description.)

Parcel No. 70.
(Description.)

Parcel No. 71.
(Description.)

Parcel No. 72.
(Description.)

Parcel No. 73.
(Description.)

Parcel No. 74.
(Description.)

Parcel No. 75.
(Description.)

Parcel No. 76.
(Description.)

Parcel No. 77.
(Description.)

Parcel No. 78.
(Description.)

Also all the following described parcels of land, being in division 5, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 79.
(Description.)

Parcel No. 80.
(Description.)

Parcel No. 81.
(Description.)

Parcel No. 82.
(Description.)

Parcel No. 83.
(Description.)

Parcel No. 84.
(Description.)

Parcel No. 85.
(Description.)

Parcel No. 86.
(Description.)

Parcel No. 87.
(Description.)

Parcel No. 88.
(Description.)

Parcel No. 89.
(Description.)

Parcel No. 90.
(Description.)

Parcel No. 91.
(Description.)

Parcel No. 92.
(Description.)

Also all the following described parcels of land, being in division 6, Malibu road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 93.
(Description.)

Parcel No. 94.
(Description.)

Parcel No. 95.
(Description.)

Also all the following described parcels of land, being in division 7, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 96.
(Description.)

Parcel No. 97.
(Description.)

Parcel No. 98.
(Description.)

Parcel No. 98-A.
(Description.)

Parcel No. 99.
(Description.)

Parcel No. 100.
(Description.)

Parcel No. 101.
(Description.)

Parcel No. 102.
(Description.)

Parcel No. 103.
(Description.)

Parcel No. 104.
(Description.)

Parcel No. 105.
(Description.)

Parcel No. 106.
(Description.)

Parcel No. 107.
(Description.)

Parcel No. 108.
(Description.)

Parcel No. 109.
(Description.)

Parcel No. 110.
(Description.)

Parcel No. 111.
(Description.)

Parcel No. 112.
(Description.)

Parcel No. 113.
(Description.)

Parcel No. 114.
(Description.)

Parcel No. 115.
(Description.)

Parcel No. 116.
(Description.)

Parcel No. 117.
(Description.)

Parcel No. 118.
(Description.)

Parcel No. 119.
(Description.)

Parcel No. 120.
(Description.)

Parcel No. 121.
(Description.)

Parcel No. 122.
(Description.)

Parcel No. 123.
(Description.)

Parcel No. 124.
(Description.)

Parcel No. 125.
(Description.)

Parcel No. 126.
(Description.)

Parcel No. 127.
(Description.)

Parcel No. 128.
(Description.)

Parcel No. 129.
(Description.)

Parcel No. 130.
(Description.)

Parcel No. 131.
(Description.)

Parcel No. 132.
(Description.)

Parcel No. 133.
(Description.)

Parcel No. 134.
(Description.)

Parcel No. 135.
(Description.)

Parcel No. 136.
(Description.)

43 Also all the following described parcels of land, being in division 8, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 137.
(Description.)

Parcel No. 138.
(Description.)

Parcel No. 139.
44 (Description.)

Parcel No. 140.
(Description.)

Parcel No. 141.
(Description.)

Parcel No. 142.
(Description.)

Parcel No. 143.
(Description.)

45 Parcel No. 144.
(Description.)

Parcel No. 145.
(Description.)

Parcel No. 146.
(Description.)

excepting so much of said land as is now included within any public highway, alley or lane.

Further reference is hereby made to said county surveyor's map No. 8070, on which the

location of all parcels of land herein described is accurately shown.

Now, therefore, be it resolved, and it is the finding and determination of this board, that the public interest and necessity require the acquisition by the county of Los Angeles of those certain pieces or parcels of land hereinbefore described for a public purpose, namely, for public highway purposes, and for the construction and completion of a public highway thereover; and,

Be it futher resolved, that those certain pieces or parcels of land hereinabove described be condemned for a public purpose, namely, for a public highway and the construction and completion thereof, and the county counsel of the county of Los Angeles is hereby directed to institute proceedings in the Superior Court of the state of California in and for said county of Los Angeles for the condemnation of those certain pieces or parcels of real property hereinabove described for public highway purposes, and to take all steps necessary for the condemnation of said piece or parcels of land in the name of said county."

III.

That it is necessary for county purposes and the public interest, convenience and necessity require the acquisition of an easement in and over the properties hereinabove particularly de-

49 scribed for the establishment and maintenance of a public highway as prayed for herein.

VI.

That the lands in and over which it is necessary to acquire said easement are situate in the county of Los Angeles, state of California, and are those pieces and parcels of land more particularly described in the resolution hereinbefore referred to, and set forth in paragraph II herein.

That none of the property hereinbefore de-
50 scribed sought to be condemned herein has heretofore been appropriated to any public use.

That the public use is located by the taking of said lands in the manner which will be most compatible with the greatest public good and the least private injury.

V.

That the names of all the owners and claimants of the property sought to be condemned in
51 this action or any part thereof, so far as known to this plaintiff, are set forth in the title hereof.

VI.

1. That the lands described in paragraph II of this complaint embrace a parcel of land described as follows, to-wit:

A strip of land 40 feet wide, being a portion of the Rancho Topanga Malibu Sequit, as shown on map recorded in book No. 1, page 414 *et seq.* of patents, records of Los Angeles county, said strip being bounded easterly by the easterly line

of said rancho, and bounded westerly by the westerly line of that certain parcel of land described in deed recorded in deed book 766, page 221 *et seq.*, records of said county, and lying 20 feet on each side of the following described center line:

(Description.)

Reference is hereby made to county surveyor's map No. 8070, on which the location of the above described strip of land is accurately shown, said map being on file in the office of the surveyor of Los Angeles county.

Also the following described parcels of land, being in division 1 of said Malibu Road as shown on said county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 1.
(Description.)

Parcel No. 2.
(Description.)

Parcel No. 3.
(Description.)

Parcel No. 4.
(Description.)

Parcel No. 5.
(Description.)

Parcel No. 6.
(Description.)

55 Parcel No. 7.
(Description.)

Parcel No. 8.
(Description.)

Parcel No. 9.
(Description.)

Parcel No. 10.
(Description.)

Parcel No. 11.
(Description.)

56 Parcel No. 12.
(Description.)

Parcel No. 13.
(Description.)

Parcel No. 14.
(Description.)

Parcel No. 15.
(Description.)

Parcel No. 16.
57 (Description.)

Parcel No. 17.
(Description.)

Parcel No. 18.
(Description.)

Parcel No. 19.
(Description.)

Parcel No. 20.
(Description.)

Parcel No. 20-A.
(Description.)

58 That plaintiff is informed and believes and therefore alleges that the defendant, May K. Rindge, a widow, is the owner of the parcels of land last above described, sought to be condemned in this action, and that said parcels of land include only a part of an entire tract of land owned by said defendant, May K. Rindge, a widow, which said entire tract of land is described as follows, to-wit:

59 All that real property situated in the Rancho Topanga Malibu Siguet (also known as Topango Malibu Sequit), county of Los Angeles, state of California, described as follows:

(Description.)

That plaintiff is informed and believes and therefore alleges that the defendant, Henry W. Keller, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, under and

60 by virtue of a certain reservation of a right of way to pass and repass over and along a private road in said land, as per deed from said Henry W. Keller to said May K. Rindge, wife of Frederick H. Rindge, dated January 15, 1892, and recorded in book 766, at page 221 of deeds, records of Los Angeles county.

That plaintiff is informed and believes and therefore alleges that the defendant, Pacific Mutual Life Insurance Company of California, a corporation, has an interest in the parcel of

61 land last above described, and in the portion thereof sought to be condemned in this action, but that the nature or extent of said interest is unknown to this plaintiff.

That plaintiff is informed and believes and therefore alleges that the defendant, Pacific Mutual Life Insurance Company, a corporation, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, under
62 and by virtue of a certain mortgage, dated January 20, 1914, and recorded in book 3571, at page 59 of mortgages, records of Los Angeles county, to secure the payment of a note for $45,000; the time for the payment of which note is extended to January 20, 1917, by an agreement between said May K. Rindge, a widow, and said Pacific Mutual Life Insurance Company, a corporation, and is dated November 25, 1914, and
63 recorded in book 3731, at page 240 of mortgages, records of Los Angeles county.

That plaintiff is informed and believes and therefore alleges that the defendant, May K. Rindge, a widow, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, but that the nature or extent of said interest is unknown to this plaintiff.

That plaintiff is informed and believes and therefore alleges that the defendant, Samuel K.

64 Rindge, has an interest in the parcel of land last above described, and in the portion therof sought to be condemned in this action, but that the nature or extent of said interest is unknown to this plaintiff.

That plaintiff is informed and believes and therefore alleges that the defendant, Rhoda Rindge Adamson, has an interest in the parcel of land last above described, and in the portion
65 thereof sought to be condemned in this action, but that the nature or extent of said interest is unknown to this plaintiff.

That plaintiff is informed and believes and therefore alleges that the defendant, Merritt H. Adamson, husband of the defendant, Rhoda Rindge Adamson, has an interest in the parcel of land last above decribed, and in the portion thereof sought to be condemned in this action, but that the nature or extent of said interest is
66 unknown to this plaintiff.

That plaintiff is informed and believes and therefore alleges that the defendant, Samuel K. Rindge, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this acti[illegible] under and by virtue of a certain action now p[illegible]ding in the Superior Court of the state of California, entitled "Samuel K. Rindge, plaintiff, v. Rindge Company, a corporation, May K. Rindge, Frederick H. Rindge, Rhoda Rindge Adamson and

67 Merritt H. Adamson, her husband, defendants," which said action is numbered B41239, filed August 15, 1916, in the office of the clerk of the county of Los Angeles.

2. That the lands described in paragraph II of this complaint embrace parcels of land described as follows, to-wit:

A strip of land 40 feet wide, being a portion of the Rancho Topanga Malibu Sequit, as shown
68 on map recorded in Book 1, page 414, *et seq.*, of patents, records of Los Angeles county, said strip being bounded easterly by the westerly line of that certain parcel of land described in deed book 766, page 221 *et seq.*, records of said county, and bounded westerly by the westerly line of said Rancho Topanga Malibu Sequit, and lying 20 feet on each side of the following described center line:

(Description.)

69 Also the following described parcels of land being in division 1 of said Malibu Road, as shown on said county surveyor's map No. 8070, on file in the office of surveyor of Los Angeles county:

Parcel No. 21.
(Description.)

Parcel No. 21-A.
(Description.)

Parcel No. 22.
(Description.)

70 Parcel No. 23.
(Description.)

Parcel No. 24.
(Description.)

Parcel No. 25.
(Description.)

Parcel No. 26.
(Description.)

Parcel No. 27.
(Description.)

71 Parcel No. 28.
(Description.)

Parcel No. 29.
(Description.)

Parcel No. 30.
(Description.)

Parcel No. 31.
(Description.)

72 Parcel No. 32.
(Description.)

Parcel No. 33.
(Description.)

Parcel No. 34.
(Description.)

Parcel No. 35.
(Description.)

Also the following described parcels of land, being in division 1 and division 2, Malibu Road,

as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 36.
(Description.)

Parcel No. 37.
(Description.)

Also the following described parcels of land, being in division 2, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 38.
(Description.)

Parcel No. 39.
(Description.)

Parcel No. 40.
(Description.)

Parcel No. 41.
(Description.)

Parcel No. 42.
(Description.)

Parcel No. 43.
(Description.)

Parcel No. 44.
(Description.)

Parcel No. 45.
(Description.)

Parcel No. 46.
(Description.)

76 Also the following described parcels of land, being in division 3, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 47.
(Description.)

Parcel No. 48.
(Description.)

Parcel No. 49.
77 (Description.)

Parcel No. 50.
(Description.)

Parcel No. 51.
(Description.)

Parcel No. 52.
(Description.)

Parcel No. 53.
(Description.)

78 Parcel No. 54.
(Description.)

Parcel No. 55.
(Description.)

Parcel No. 56.
(Description.)

Parcel No. 57.
(Description.)

Parcel No. 58.
(Description.)

79 Parcel No. 59.
(Description.)

Parcel No. 60.
(Description.)

Parcel No. 61.
(Description.)

Parcel No. 62.
(Description.)

Parcel No. 63.
80 (Description.)

Parcel No. 64.
(Description.)

Parcel No. 65.
(Description.)

Parcel No. 66.
(Description.)

Parcel No. 67.
(Description.)

81 Also the following described parcels of land, being in division 4, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 68.
(Description.)

Parcel No. 69.
(Description.)

Parcel No. 70.
(Description.)

82 Parcel No. 71.
(Description.)

Parcel No. 72.
(Description.)

Parcel No. 73.
(Description.)

Parcel No. 74.
(Description.)

Parcel No. 75.
83 (Description.)

Parcel No. 76.
(Description.)

Parcel No. 77.
(Description.)

Parcel No. 78.
(Description.)

Also all the following described parcels of land, being in division 5, Malibu Road, as shown
84 on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 79.
(Description.)

Parcel No. 80.
(Description.)

Parcel No. 81.
(Description.)

Parcel No. 82.
(Description.)

85 Parcel No. 83.
(Description.)

Parcel No. 84.
(Description.)

Parcel No. 85.
(Description.)

Parcel No. 86.
(Description.)

Parcel No. 87.
(Description.)

86 Parcel No. 88.
(Description.)

Parcel No. 89.
(Description.)

Parcel No. 90.
(Description.)

Parcel No. 91.
(Description.)

Parcel No. 92.
(Description.)

87 Also all the following described parcels of land, being in division 6, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 93.
(Description.)

Parcel No. 94.
(Description.)

Parcel No. 95.
(Description.)

88 Also all the following described parcels of land, being in division 7, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 96.
(Description.)

Parcel No. 97.
(Description.)

Parcel No. 98.
89 (Description.)

Parcel No. 98-A.
(Description.)

Parcel No. 99.
(Description.)

Parcel No. 100.
(Description.)

Parcel No. 101.
(Description.)

90 Parcel No. 102.
(Description.)

Parcel No. 103
(Description.)

Parcel No. 104.
(Description.)

Parcel No. 105.
(Description.)

Parcel No. 106.
(Description.)

91 Parcel No. 107.
(Description.)

Parcel No. 108.
(Description.)

Parcel No. 109.
(Description.)

Parcel No. 110.
(Description.)

Parcel No. 111.
92 (Description.)

Parcel No. 112.
(Description.)

Parcel No. 113.
(Description.)

Parcel No. 114.
(Description.)

Parcel No. 115.
(Description.)

93 Parcel No. 116.
(Description.)

Parcel No. 117.
(Description.)

Parcel No. 118.
(Description.)

Parcel No. 119.
(Description.)

Parcel No. 120.
(Description.)

94 Parcel No. 121.
(Description.)

Parcel No. 122.
(Description.)

Parcel No. 123.
(Description.)

Parcel No. 124.
(Description.)

Parcel No. 125.
95 (Description.)

Parcel No. 126.
(Description.)

Parcel No. 127.
(Description.)

Parcel No. 128.
(Description.)

Parcel No. 129.
(Description.)

96 Parcel No. 130.
(Description.)

Parcel No. 131.
(Description.)

Parcel No. 132.
(Description.)

Parcel No. 133.
(Description.)

Parcel No. 134.
(Description.)

97 Parcel No. 135.
(Description.)

Parcel No. 136.
(Description.)

Also all the following described parcels of land, being in division 8, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 137.
98 (Description.)

Parcel No. 138.
(Description.)

Parcel No. 139.
(Description.)

Parcel No. 140.
(Description.)

Parcel No. 141.
(Description.)

99 Parcel No. 142.
(Description.)

Parcel No. 143.
(Description.)

Parcel No. 144.
(Description.)

Parcel No. 145.
(Description.)

Parcel No. 146.
(Description.)

Further reference is hereby made to said county surveyor's map No. 8070, on which the location of all parcels of land herein described is accurately shown.

That plaintiff is informed and believes and therefore alleges that the defendant, Rindge Company, a corporation, is the owner of the parcels of land last above described, sought to be condemned in this action, and that said parcels of land include only a part of an entire tract of land owned by said defendant, Rindge Company, a corporation, which said entire tract of land is described as follows, to-wit:

All that piece or parcel of land containing 13,315.70 acres, and being designated upon the plate of public surveys as

Lot No. 37, T. 1 S., R. 17 west;
Lot No. 37, T. 1 S., R. 18 west;
Lot No. 37, T. 1 S., R. 19 west;
Lot No. 38, T. 1 S., R. 20 west;
Lot No. 37, T. 2 S., R. 17 west;
Lot No. 38, T. 2 S., R. 17 west;
Lot No. 37, T. 2 S., R. 18 west;
Lot No. 38, T. 2 S., R. 18 west;
Lot No. 37, T. 2 S., R. 19 west;

all of San Bernardino meridian.

That plaintiff is informed and believes and therefore alleges that the defendant, Henry W. Keller, has an interest in the parcel of land last above described, and in the portion thereof

103 sought to be condemned in this action, under and by virtue of a certain reservation of a right of way to pass and repass over and along a private road in said land, as per deed from said Henry W. Keller to said May K. Rindge, wife of Frederick H. Rindge, dated January 15th, 1892, and recorded in book 766, at page 221 of deeds, records of Los Angeles county.

That plaintiff is informed and believes and
104 therefore alleges that the defendant, Hueneme, Malibu and Port Los Angeles Railway, a corporation, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, under and by virtue of a certain perpetual right of way for construction and maintenance of a railway, dated October 6, 1903, and recorded in book 1898, at page 146 of deeds, and running between Frederick H. Rindge and May K.
105 Rindge, his wife, grantors, and Hueneme, Malibu and Port Los Angeles Railway, a corporation, grantees.

That plaintiff is informed and believes and therefore alleges that the defendant, Hueneme, Malibu and Southern Railway, a corporation, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, under and by virtue of a certain deed to a right of way for railway purposes only, dated February 2, 1916, and re-

corded in book 6216, at page 92 of deeds, records of Los Angeles county.

That plaintiff is informed and believes and therefore alleges that the defendant, Samuel K. Rindge, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, under and by virtue of a certain action now pending in the Superior Court of the state of California, entitled "Samuel K. Rindge, plaintiff, v. Rindge Company, a corporation, May K. Rindge, Frederick H. Rindge, Rhoda Rindge Adamson and Merritt H. Adamson, her husband, defendants," which said action is numbered B-41239, filed August 15, 1916, in the office of the clerk of the county of Los Angeles.

That plaintiff is informed and believes and therefore alleges that the defendant, May K. Rindge, a widow, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, but that the nature or extent of said interest is unknown to this plaintiff.

That plaintiff is informed and believes and therefore alleges that the defendant, Samuel K. Rindge, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, but that the nature or extent of said interest is unknown to this plaintiff.

That plaintiff is informed and believes and therefore alleges that the defendant, Rhoda Rindge Adamson, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, but that the nature or extent of said interest is unknown to this plaintiff.

That plaintiff is informed and believes and therefore alleges that the defendant, Merritt H. Adamson, husband of the defendant, Rhoda Rindge Adamson, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, but that the nature or extent of said interest is unknown to this plaintiff.

VII.

That the parcels of land described in paragraph VI of this complaint, sought to be condemned herein, and being the lands described in paragraph II hereof, constitute all the lands sought to be condemned in this action.

VIII.

That the defendants, John One, John Two, John Three, John Four, John Five, Mary One, Mary Two, Mary Three, Mary Four and Mary Five, are sued and designated herein by fictitious names for the reason that their true names are unknown to this plaintiff, and that said plaintiff, upon ascertaining their said true name, will substitute the same for such fictitious names by

112 proper amendment; and that said defendants have or claim some interest or lien upon the lands in paragraph II of this complaint described, or in some part or parcel thereof; but the nature, character and extent of such claim, interest or lien is unknown to this plaintiff.

IX.

That the location, general route and termini of said use and said improvement hereinbefore
113 described, and all parcels of land sought to be condemned in this action are marked red and correctly delineated and shown upon the map thereof, hereto attached, and marked "Exhibit A," which said map is hereby referred to and made a part of this complaint.

That where any of said parcels of land so sought to be condemned constitute only a part of a larger parcel, such larger parcel is also correctly delineated and shown upon said map.

114 Wherefore, this plaintiff prays that the defendants be required by answer to set forth the nature and extent of their several estates or interests in the land or any parcel thereof sought to be condemned in this action, and that such several estates and interests may be determined and adjudicated in this action; that the value of each and every such separate estate or interest in said land or any parcel thereof, and the damage accruing to the respective owners of such separate estates or interests, by rea-

115 son of the condemnation thereof in the construction of the improvements in the manner proposed by the plaintiff, be ascertained and adjudged; that upon the payment to the said several defendants, or into court for them, of the several amounts so ascertained, the court make and enter a final judgment condemning the lands herein to the public use for the public improvement herein described, and for such further and other relief as to the court may seem meet in
116 the premises.

A. J. HILL,
County Counsel, and
CHARLES E. HAAS,
Deputy County Counsel,
Attorneys for Plaintiff.

State of California, County of Los Angeles—ss.

Charles E. Haas, being first duly sworn, deposes and says: That the plaintiff, the County of
117 Los Angeles, is a body politic and corporate, a legal subdivision of the state of California, and therefore is unable to verify the foregoing complaint, except through its officers; that he is a deputy county counsel of said plaintiff, County and an attorney for the plaintiff in the above entitled action, and that as such deputy county counsel he is an officer of said county, and verifies this complaint; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge,

118 except as to those matters stated upon information or belief, and as to those matters he believes it to be true.

CHARLES E. HAAS.

Subscribed and sworn to before me this 14 day of October, 1916.

H. J. LELANDE, *County Clerk.*
By EMILY W. WUSSOW, *Deputy.*

Endorsed: Filed Oct. 18, 1916. H. J. Lelande, clerk; by H. Moore, deputy.

119

[TITLE OF COURT AND CAUSE.]

Appearance of Certain Parties.

To H. J. Lelande, County Clerk and Clerk of the Above-Entitled Court :

You are hereby authorized and instructed to enter the appearances of the following named defendants in the above-entitled action, to-wit: Rindge Company, a corporation; May K. Rindge, Frederick H. Rindge, Rhoda Rindge
120 Adamson, Merritt H. Adamson, Hueneme, Malibu & Southern Railway, a corporation; Hueneme, Malibu & Port Los Angeles Railway, a corporation; the Pacific Mutual Life Insurance Company, a corporation, and the Pacific Mutual Life Insurance Company of California, a corporation.

Dated December 4th, 1916.

Respectfully,
ANDERSON & ANDERSON,
Attorneys for Said Defendants.

121 Endorsed: Filed Dec. 5, 1916. H. J. Lelande, clerk; by H. Brodek, deputy.

[TITLE OF COURT AND CAUSE.]

Demurrer of Defendant May K. Rindge to the Complaint.

Now comes May K. Rindge, one of the defendants in the above-entitled action, and demurring to the complaint of plaintiff therein for
122 grounds of demurrer says:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

II.

That the said complaint does not state facts sufficient to constitute a cause of action in that it fails to comply with Subd. 5 of Sec. 1244 of the Code of Civil Procedure, and does not con-
123 tain a description of each piece of land sought to be taken by the plaintiff.

III.

That said complaint is uncertain in this that it cannot be ascertained therefrom what parcels of land belonging to this defendant, or what parcels of land belonging to the defendant Rindge Company, or either, or how many of such parcels, are sought to be taken, and particularly in this:

124 (a)—That while in paragraph VI of said complaint, and commencing at line 6 of page 114 of said complaint, and ending at line 5 of page 118 of said complaint, there is a purported and attempted description of a single parcel of land alleged in said paragraph to belong to and be the property of this defendant, it appears from the map, Exhibit "A," annexed to said complaint, referred to in paragraph IX of said
125 complaint, and alleged to show "the location, general route and termini of said use and said improvement hereinbefore"—that is to say, in said complaint—"described, and all parcels of land sought to be condemned in this action, are marked red and correctly delineated" upon said map, marked "Exhibit A," that the said piece or parcel of land so purported to be described in paragraph VI of said complaint is divided into 40 parcels of land, 30 parcels of which only
126 are marked in red upon said map, and none of which is separately described in said complaint;

(b)—That while in paragraph VI of said complaint, and commencing at line 5 of page 134 of the complaint, and ending at line 13 of page 160 of said complaint, there is a purported and attempted description of a single parcel of land alleged in said paragraph to belong to and be the property of the defendant Rindge Company, a corporation, it appears from the said map, Exhibit "A," annexed to said complaint that the

said last mentioned piece or parcel of land so purported to be described in paragraph VI of said complaint is divided into 56 parcels of land, 28 parcels of which only are marked in red upon said map, and none of which is separately described in said complaint;

(c)—That, therefore, it is impossible to ascertain from said complaint whether it is the purpose and intent of the plaintiff therein to condemn each of said two above mentioned parcels of land so as aforesaid described in said paragraph VI of said complaint as a whole, or whether it is the intention of the plaintiff in said complaint to condemn the separate parcels into which said two parcels are divided and segregated upon said map, Exhibit "A," or a part and portion only of said separate parcels.

IV.

That said complaint is ambiguous in each and all and every of the particulars in which it is above alleged, set forth and specified that the same is uncertain, and in the further and other particular that the same is contradictory in this that the land hereinabove referred to as having been described in paragraph VI of said complaint is other and different from the land alleged in paragraph IX of said complaint to be shown upon said map as the land so sought to be condemned.

130 V.

That said complaint is unintelligible in each and all and every of the particulars in which it is above alleged, set forth and specified that the same is uncertain, and in each and all and every of the particulars in which it is above alleged, set forth and specified that it is ambiguous.

Wherefore, this defendant prays to be hence dismissed with her costs.

131 ANDERSON & ANDERSON,
Attorneys for Said Defendant May K. Rindge.

Endorsed: Received copy of the within demurrer this 5 day of Dec., 1916. A. J. Hill, county counsel; by C. E. Haas, dep., attorney for plaintiff.

Filed Dec. 5, 1916. H. J. Lelande, clerk; by H. Brodek, deputy.

[TITLE OF COURT AND CAUSE.]

132 **Demurrer of Defendants Frederick H. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson, Hueneme, Malibu & So. Ry., a Corporation; Hueneme, Malibu & Port Los Angeles Ry., a Corporation; Pacific Mutual Life Insurance Co., a Corporation, and Pacific Mutual Life Insurance Co. of California, a Corporation, to Complaint.**

Now come Frederick H. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson, Hue-

neme, Malibu & Southern Railway, a corporation; Hueneme, Malibu & Port Los Angeles Railway; a corporation; the Pacific Mutual Life Insurance Company, a corporation, and the Pacific Mutual Life Insurance Company of California, a corporation, defendants in the above-entitled action, and demurring to the complaint of plaintiff therein for grounds of demurrer say:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

II.

That the said complaint does not state facts sufficient to constitute a cause of action in that it fails to comply with Subd. 5 of Sec. 1244 of the Code of Civil Procedure, and does not contain a description of each piece of land sought to be taken by the plaintiff.

III.

That said complaint is uncertain in this that it cannot be ascertained therefrom what parcels of land belonging to the defendant May K. Rindge, or what parcels of land belonging to the defendant Rindge Company, or either, or how many of such parcels, are sought to be taken, and particularly in this:

(a)—That while in paragraph VI of said complaint, and commencing at line 6 of page 114 of said complaint, and ending at line 5 of

page 118 of said complaint, there is a purported and attempted description of a single parcel of land alleged in said paragraph to belong to and be the property of the defendant May K. Rindge, it appears from the map, Exhibit "A," annexed to said complaint, referred to in paragraph IX of said complaint, and alleged to show "the location, general route and termini of said use and said improvement hereinbefore"—that is to say, in said complaint—"described, and all parcels of land sought to be condemned in this action, are marked red and correctly delineated" upon said map, marked Exhibit "A," that the said piece or parcel of land so purported to be described in paragraph VI of said complaint is divided into 40 parcels of land, 30 parcels of which only are marked in red upon said map, and none of which is separately described in said complaint;

(b)—That while in paragraph VI of said complaint, and commencing at line 5 of page 134 of the complaint, and ending at line 13 of page 160 of said complaint, there is a purported and attempted description of a single parcel of land alleged in said paragraph to belong to and be the property of the defendant Rindge Company, a corporation, it appears from the said map, Exhibit "A," annexed to said complaint that the said last mentioned piece or parcel of land so purported to be described in paragraph VI of

said complaint is divided into 56 parcels of land, 28 parcels of which only are marked in red upon said map, and none of which is separately described in said complaint;

(c)—That, therefore, it is impossible to ascertain from said complaint whether it is the purpose and intent of the plaintiff therein to condemn each of said two above mentioned parcels of land so as aforesaid described in said paragraph VI of said complaint as a whole, or whether it is the intention of the plaintiff in said complaint to condemn the separate parcels into which said two parcels are divided and segregated upon said map, Exhibit "A," or a part and portion only of said separate parcels.

IV.

That said complaint is ambiguous in each and all and every of the particulars in which it is above alleged, set forth and specified that the same is uncertain, and in the further and other particular that the same is contradictory in this that the land hereinabove referred to as having been described in paragraph VI of said complaint is other and different from the land alleged in paragraph IX of said complaint to be shown upon said map as the land so sought to be condemned.

V.

That said complaint is unintelligible in each and all and every of the particulars in which it

142 is above alleged, set forth and specified that the same is uncertain, and in each and all and every of the particulars in which it is above alleged, set forth and specified that it is ambiguous.

Wherefore, said defendants pray to be hence dismissed with their costs.

ANDERSON & ANDERSON,
Attorneys for Said Defendants.

Endorsed: Received copy of the within de-
143 murrer this 5 day of Dec., 1916. A. J. Hill, county counsel; by C. E. Haas, dep., attorney for plaintiff.

Filed Dec. 5, 1916. H. J. Lelande, clerk; by H. Brodek, deputy.

[TITLE OF COURT AND CAUSE.]

Demurrer of Defendant Rindge Company, a Corporation, to Complaint.

144 Now comes the Rindge Company, a corporation, one of the defendants in the above-entitled action, and demurring to the complaint of plaintiff therein for grounds of demurrer says:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

II.

That the said complaint does not state facts sufficient to constitute a cause of action in that

145 it fails to comply with Subd. 5 of Sec. 1244 of the Code of Civil Procedure, and does not contain a description of each piece of land sought to be taken by the plaintiff.

III.

That said complaint is uncertain in this that it cannot be ascertained therefrom what parcels of land belonging to this defendant, or what parcels of land belonging to the defendant May K. Rindge, or either, or how many of such par-
146 cels, are sought to be taken, and particularly in this:

(a)—That while in paragraph VI of said complaint, and commencing at line 6 of page 114 of said complaint, and ending at line 5 of page 118 of said complaint, there is a purported and attempted description of a single parcel of land alleged in said paragraph to belong to and be the property of the defendant May K. Rindge,
147 it appears from the map, Exhibit "A," annexed to said complaint, referred to in paragraph IX of said complaint, and alleged to show "the location, general route and termini of said use and said improvement hereinbefore"—that is to say, in said complaint—"described, and all parcels of land sought to be condemned in this action, are marked red and correctly delineated" upon said map, marked "Exhibit A," that the said piece or parcel of land so purported to be described in paragraph VI of said complaint is

148 divided into 40 parcels of land, 30 parcels of which only are marked in red upon said map, and none of which is separately described in said complaint;

(b)—That while in paragraph VI of said complaint, and commencing at line 5 of page 134 of the complaint, and ending at line 13 of page 160 of said complaint, there is a purported and attempted description of a single parcel of land
149 alleged in said paragraph to belong to and be the property of this defendant Rindge Company, a corporation, it appears from the said map, Exhibit "A," annexed to said complaint that the said last mentioned piece or parcel of land so purported to be described in paragraph VI of said complaint is divided into 56 parcels of land, 28 parcels of which only are marked in red upon said map, and none of which is separately described in said complaint;

150 (c)—That, therefore, it is impossible to ascertain from said complaint whether it is the purpose and intent of the plaintiff therein to condemn each of said two above mentioned parcels of land so as aforesaid described in said paragraph VI of said complaint as a whole, or whether it is the intention of the plaintiff in said complaint to condemn the separate parcels into which said two parcels are divided and segregated upon said map, Exhibit "A," or a part and portion only of said separate parcels.

151 IV.

That said complaint is ambiguous in each and all and every of the particulars in which it is above alleged, set forth and specified that the same is uncertain, and in the further and other particular that the same is contradictory in this that the land hereinabove referred to as having been described in paragraph VI of said complaint is other and different from the land al-
152 leged in paragraph IX of said complaint to be shown upon said map as the land so sought to be condemned.

V.

That said complaint is unintelligible in each and all and every of the particulars in which it is above alleged, set forth and specified that the same is uncertain, and in each and all and every of the particulars in which it is above alleged, set forth and specified that it is ambiguous.

153 Wherefore, this defendant prays to be hence dismissed with its costs.

ANDERSON & ANDERSON,

Attorneys for Defendant Rindge Company, a Corporation.

Endorsed: Received copy of the within demurrer this 5 day of Dec., 1916. A. J. Hill, county counsel; by C. E. Haas, dep., attorney for plaintiff.

Filed Dec. 5, 1916. H. J. Lelande, clerk; by H. Brodek, deputy.

154 [TITLE OF COURT AND CAUSE.]

Order for Amendment by Interlineation.

On motion of A. J. Hill, county counsel, and Edward T. Bishop, deputy county counsel, attorneys for the plaintiff above named, it is hereby ordered that the complaint in the above entitled action may be amended as follows:

(1) By adding the words "by a two-thirds vote of all the members" after the figures "1916"
155 and before the word "duly" in line 24, page 2 of said complaint.

(2) By substituting a new map consisting of five sheets, to be marked Exhibit "A," in lieu and instead of Exhibit "A" now attached to said complaint.

The deft. objects to the order allowing the amendment. Deft. is given 10 days to plead to the complaint as so amended.

156 It is further ordered that said clerk make said amendment by interlineation and the parties consenting thereto that the clerk detach from the complaint the map therein referred to as Ex. A, sheets 1, 2, 3, 4 & 5, and keep the same, and the map hereinabove in paragraph No. 2, separately from the said complaint.

Dated this 8th day of January, 1918.

GRANT JACKSON,

Judge.

157 Approved.

A. J. HILL,
County Counsel;
EDWARD T. BISHOP,
Deputy County Counsel,
For Plff.

Approved subject to objection above stated.
ANDERSON & ANDERSON,
For Defts.

Endorsed: Department No. 16. Filed Jan. 8,
158 1918. H. J. Lelande, clerk; by Geo. B. Whiteleather, deputy.

[TITLE OF COURT AND CAUSE.]

Demurrer of Defendant May K. Rindge to Complaint as Amended.

Now comes May K. Rindge, one of the defendants in the above-entitled action, and demurring to the complaint therein as amended
159 for grounds of demurrer says:

I.

That said complaint does not state facts sufficient to constitute a cause of action against this defendant.

II.

That said complaint as to this defendant is uncertain in the following particulars, to-wit:

First—That it cannot be ascertained therefrom which or how many of the parcels of land

160 described in paragraph VI thereof are claimed and alleged by the plaintiff to be the property of this defendant.

Second—That it cannot be ascertained therefrom which or how many of the parcels of land described in paragraph VI thereof are claimed and alleged by the plaintiff to be a part of the entire tract of land further described in paragraph VI thereof, the description of which com-
161 mences at line 7, page 130, of said complaint, and ends with line 21 of page 131 thereof.

Third—That it cannot be ascertained therefrom what relation the property sought to be condemned thereby, whether it be the property of this defendant or of any other defendant or defendants, bears to any other property of which it is a part; and more particularly in this that the map filed as an amendment to said complaint and as the substituted Exhibit "A" there-
162 of fails to contain or show in its entirety, or by proper subdivision or description, or delineation, any parcel of land specifically of which any part or portion of the land of this defendant sought to be condemned forms a part, and likewise and in like manner fails to show specifically any parcel or parcels of land of which any part or portion of the lands of either or any of the other defendants sought to be condemned form a part.

163 III.

That said complaint as amended is ambiguous in each and all and every of the particulars in which it is hereby alleged to be uncertain.

IV.

That said complaint as amended is unintelligible in each and all and every of the particulars in which it is hereby alleged to be uncertain.

V.

164 Wherefore, this defendant prays to be hence dismissed with her costs.

. . . . . .

. . . . . .

Attorneys for Said Defendant.

In the Superior Court of the state of California, in and for the county of Los Angeles. County of Los Angeles, plaintiff, vs. Rindge Company, a corporation, *et al.*, defendants. No. B-43572-16.

165 POINTS AND AUTHORITIES ON DEMURRERS OF VARIOUS DEFENDANTS TO COMPLAINT AS AMENDED.

I.

The Map Accompanying the Complaint as Amended and Substituted as Exhibit "A" Thereof, Is Not Sufficient to Give the Information Required of It by the Statute.

While Sec. 1244 of the Code of Civil Procedure is slightly ambiguous as to just what the

166 map which it prescribes shall contain, it seems to have been clearly the purpose and intent of the Legislature, and it seems to be clearly the purpose and intent of the law, that the map thus required to accompany the complaint should contain all of the matters and things necessary to show what property the plaintiff seeks to condemn and its general relation, or, to be more exact, its specific relation, to any larger tract of which it forms a part.

167 In other words, the map should contain those matters which the map annexed in the case of *Mendocino County v. Peters*, 2 Cal. App. 24, was found to contain, and which were held to be sufficient, namely: "The nature of the alteration, the location, general route and termini, the description of the land sought to be taken, AND ITS RELATION TO THE LARGER PARCEL OF WHICH IT IS A PART." (Op. p. 26.)

168 The complaint in question seeks to condemn nearly 150 separate and distinct parcels.

It delineates them upon a map showing but a part only of the entire tract or tracts of which it is claimed that they are a part, and their general relation to the entire tract or tracts as a whole cannot, therefore, be ascertained by any inspection of this particular map upon which these parcels are specifically located.

As a part of Exhibit "A" and accompanying this specific map there is a large general map

169 that purports to be a map of the Rancho To-
panga Malibu Sequit, and this map contains a
sort of general outline of the proposed road
through the ranch, but does not show either or
any of the innumerable small parcels sought to
be condemned on either side of, and as adjuncts
to, the main road, nor does it, in our opinion,
either as standing alone or as coupled up with
the more specific map of the road, but partial
map of the ranch, furnish any accurate infor-
170 mation by which the relations of these many
parcels to the larger parcels from which they
are taken can be specifically located or deter-
mined.

II.

General Uncertainty, Ambiguity and Unintelligibility as to the Defendant May K. Rindge.

At the commencement of paragraph VI, page 114, there is the following allegation: "That
171 the lands described in paragraph II of this complaint embrace *a parcel* of land described as follows, to-wit:" then follows a description by metes and bounds of a 40 foot strip of land.

On page 118 is the following allegation "Also the following described parcels of land, being in division 1 of said Malibu road," etc., followed by separate metes and bounds descriptions of some 21 separate and distinct parcels of land.

172 On pages 129 and 130 is the following allegation: "That plaintiff is informed and believes and therefore alleges that the defendant May K. Rindge, a widow, is the owner of the parcels of land last above described, sought to be condemned in this action, and that said parcels of land include only a part of an entire tract of land owned by said defendant May K. Rindge a widow, which said entire tract of land is described as follows, to-wit:"

173 We contend that it is decidedly uncertain as to whether this paragraph refers to all of the preceding parcels described in paragraph VI, or merely technically to those "last above described" —that is, to the 21 "last above described," and that, therefore, the complaint is uncertain, ambiguous and unintelligible in this particular.

III.

Same as to Defendant Rindge Company.

174 An examination by the court of the allegation at the commencement of page 134 of the allegations commencing with line 14 of page 160; of the allegations commencing at line 25 of page 171; of the allegations commencing at line 8 of page 176; of the allegations commencing at line 1 of page 181; of the allegations commencing at line 22 of page 192; of the allegations commencing at line 1 of page 198; of the allegations commencing with line 13 of page 204; of the

allegations commencing at line 24 of page 205; of the allegations commencing at line 16 of page 226; and, finally, of the allegations on page 251, will convince the court that the same defect, although in a greater degree, exists as to the defendant Rindge Company.

Taken literally, the "last above described" "parcels of land" referred to in the allegations on page 231 embrace only those parcels of land specifically following the allegations commencing with "also all the following described parcels of land" at lines 16 and 17 of page 226.

Perhaps we might rely literally upon the strict language of the complaint in this behalf, and insist that our client in this regard was only charged with the ownership of these last parcels, but we believe the complaint to be sufficiently uncertain, unintelligible and ambiguous in this behalf to warrant the interposition of this demurrer, and to warrant its being made more certain by amendment.

Respectfully submitted,

ANDERSON & ANDERSON,

NATHAN NEWBY,

Attorneys for Said Defendants.

Endorsed: Received copy of the within demurrer this 28 day of Jan., 1918. A. J. Hill, county counsel; by E. T. Bishop, attorney for plaintiff.

178 Filed Jan. 28, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

[TITLE OF COURT AND CAUSE.]

Demurrer of Rindge Company to Complaint as Amended.

Now comes Rindge Company, a corporation, one of the defendants in the above-entitled action, and demurring to the complaint therein as
179 amended for grounds of demurrer says:

I.

That said complaint does not state facts sufficient to constitute a cause of action against this defendant.

II.

That said complaint as to this defendant is uncertain in the following particulars, to-wit:

First—That it cannot be ascertained therefrom which or how many of the parcels of land
180 described in paragraph VI thereof are claimed and alleged by the plaintiff to be the property of this defendant;

Second—That it cannot be ascertained therefrom which or how many of the parcels of land described in paragraph VI thereof are claimed and alleged by the plaintiff to be a part of the entire tract or tracts of land further described in paragraph VI thereof, the description of which commences at line 24 of page 231 of said

181 complaint as amended, and ends with line 5 of page 232 of said complaint as amended;

Third—That it cannot be ascertained therefrom what relation the property sought to be condemned thereby, whether it be the property of this defendant or of any other defendant or defendants, bears to any other property of which it is a part; and more particularly in this that the map filed as an amendment to said complaint and as the substituted Exhibit "A" thereof fails
182 to contain or show in its entirety, or by proper subdivision or description or delineation, any parcel of land specifically of which any part or portion of the land of this defendant sought to be condemned forms a part, and likewise and in like manner fails to show specifically any parcel or parcels of land of which any part or portion of the lands of either or any of the other defendants sought to be condemned form a part.

III.

183 That said complaint as amended is ambiguous in each and all and every of the particulars in which it is hereby alleged to be uncertain.

IV.

That said complaint as amended is unintelligible in each and all and every of the particulars in which it is hereby alleged to be uncertain.

184 Wherefore, this defendant prays to be hence dismissed with its costs.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Said Defendant.

In the Superior Court of the state of California, in and for the county of Los Angeles.

County of Los Angeles, plaintiff, vs. Rindge Company, a corporation, *et al.*, defendants.

185 No. B43572-16.

POINTS AND AUTHORITIES ON DEMURRERS OF VARIOUS DEFENDANTS TO COMPLAINT AS AMENDED.

I.

The Map Accompanying the Complaint as Amended and Substituted as Exhibit "A" Thereof, Is Not Sufficient to Give the Information Required of It by the Statute.

186 While Sec. 1244 of the Code of Civil Procedure is slightly ambiguous as to just what the map which it prescribes shall contain, it seems to have been clearly the purpose and intent of the Legislature, and it seems to be clearly the purpose and intent of the law, that the map thus required to accompany the complaint should contain all of the matters and things necessary to show what property the plaintiff seeks to condemn and its general relation, or, to be more

187 exact, its specific relation, to any larger tract of which it forms a part.

In other words, the map should contain those matters which the map annexed in the case of *Mendocino County v. Peters*, 2 Cal. App. 24, was found to contain, and which were held to be sufficient, namely: "The nature of the alteration, the location, general route and termini, the description of the land sought to be
188 taken, AND ITS RELATION TO THE LARGER PARCEL OF WHICH IT IS A PART." (Op. p. 26.)

The complaint in question seeks to condemn nearly 150 separate and distinct parcels.

It delineates them upon a map showing but a part only of the entire tract or tracts of which it is claimed that they are a part, and their general relation to the entire tract or tracts as a whole cannot, therefore, be ascertained by any inspection of this particular map upon which
189 these parcels are specifically located.

As a part of Exhibit "A" and accompanying this specific map there is a large general map that purports to be a map of the Rancho Topanga Malibu Sequit, and this map contains a sort of general outline of the proposed road through the ranch, but does not show either or any of the innumerable small parcels sought to be condemned on either side of, and as adjuncts to, the main road, nor does it, in our opinion, either as standing alone or as coupled up with

190 the more specific map of the road, but partial map of the ranch, furnish any accurate information by which the relations of these many parcels to the larger parcels from which they are taken can be specifically located or determined.

II.

General Uncertainty, Ambiguity and Unintelligibility as to the Defendant May K. Rindge.

At the commencement of paragraph VI, page
191 114, there is the following allegation: "That the lands described in paragraph II of this complaint embrace *a parcel* of land described as follows, to-wit:" then follows a description by metes and bounds of a 40 foot strip of land.

On page 118 is the following allegation: "Also the following described parcels of land, being in division 1 of said Malibu road," etc., followed by separate metes and bounds descriptions of some 21 separate and distinct parcels of
192 land.

On pages 129 and 130 is the following allegation: "That plaintiff is informed and believes and therefore alleges that the defendant May K. Rindge, a widow, is the owner of the parcels of land last above described, sought to be condemned in this action, and that said parcels of land include only a part of an entire tract of land owned by said defendant May K. Rindge, a widow, which said entire tract of land is described as follows, to-wit:"

193 We contend that it is decidely uncertain as to whether this paragraph refers to all of the preceding parcels described in paragraph VI, or merely technically to those "last above described"—that is, to the 21 "last above described," and that, therefore, the complaint is uncertain, ambiguous and unintelligible in this particular.

III.

194 *Same as to Defendant Rindge Company.*

An examination by the court of the allegation at the commencement of page 134 of the allegations commencing with line 14 of page 160; of the allegations commencing at line 25 of page 171; of the allegations commencing at line 8 of page 176; of the allegations commencing at line 1 of page 181; of the allegations commencing at line 22 of page 192; of the allegations commencing at line 1 of page 198; of the allegations
195 commencing with line 13 of page 204; of the allegations commencing at line 24 of page 205; of the allegations commencing at line 16 of page 226; and, finally, of the allegations on page 251, will convince the court that the same defect, although in a greater degree, exists as to the defendant Rindge Company.

Taken literally, the "last above described" "parcels of land" referred to in the allegations on page 231 embrace only those parcels of land

196 specifically following the allegations commencing with "also all the following described parcels of land" at lines 16 and 17 of page 226.

Perhaps we might rely literally upon the strict language of the complaint in this behalf, and insist that our client in this regard was only charged with the ownership of these last parcels, but we believe the complaint to be sufficiently uncertain, unintelligible and ambiguous in this behalf to warrant the interposition of this
197 demurrer, and to warrant its being made more certain by amendment.

Respectfully submitted,

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Attorneys for Said Defendants.

Endorsed: Received copy of the within demurrer this 28 day of Jan., 1918. A. J. Hill, county counsel; by E. T. Bishop, attorney for
198 plaintiff.

Filed Jan. 28, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

199 [TITLE OF COURT AND CAUSE.]

Demurrer of Defendants Frederick H. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson, Hueneme, Malibu & So. Ry., a Corporation; Hueneme, Malibu & Port Los Angeles Ry., a Corporation; Pacific Mutual Life Insurance Co., a Corporation, and Pacific Mutual Life Insurance Co. of California, a Corporation, to Com-
200 **plaint as Amended.**

Now come Frederick H. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson, Hueneme, Malibu & Southern Railway, a corporation; Hueneme, Malibu & Port Los Angeles Railway, a corporation; the Pacific Mutual Life Insurance Company, a corporation, and the Pacific Mutual Life Insurance Company of California, a corporation, defendants in the above-
201 entitled action, and demurring to the complaint as amended of plaintiff therein for grounds of demurrer say:

I.

That said complaint does not state facts sufficient to constitute a cause of action against these defendants, or against either or any of them.

II.

That said complaint is uncertain in the following particulars: That it cannot be ascer-

tained therefrom what relation any parcel or parcels of the property sought to be condemned thereby bears to any other property of which it is a part, and more particularly in this, that the map filed as an amendment to said complaint and as the substituted Exhibit "A" thereof fails to contain or show in its entirety, or by proper subdivision or description or delineation, any parcel of land specifically of which any part or portion of the land of either or any of the defendants sought to be condemned form a part.

III.

That said complaint as amended is ambiguous in each and all and every of the particulars in which it is hereby alleged to be uncertain.

IV.

That said complaint as amended is unintelligible in each and all and every of the particulars in which it is hereby alleged to be uncertain.

Wherefore, these defendants, and each of them, pray to be hence dismissed with their costs.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for said Defendants.

205 In the Superior Court of the state of California, in and for the county of Los Angeles.

County of Los Angeles, plaintiff, vs. Rindge Company, a corporation, *et al.*, defendants.

No. B-43572-16.

POINTS AND AUTHORITIES ON DEMURRERS OF VARIOUS DEFENDANTS TO COMPLAINT AS AMENDED.

I.

206 *The Map Accompanying the Complaint as Amended and Substituted as Exhibit "A" Thereof, Is Not Sufficient to Give the Information Required of It by the Statute.*

While Sec. 1244 of the Code of Civil Procedure is slightly ambiguous as to just what the map which it prescribes shall contain, it seems to have been clearly the purpose and intent of the Legislature, and it seems to be clearly the purpose and intent of the law, that the map thus
207 required to accompany the complaint should contain all of the matters and things necessary to show what property the plaintiff seeks to condemn and its general relation, or, to be more exact, its specific relation, to any larger tract of which it forms a part.

In other words, the map should contain those matters which the map annexed in the case of *Mendocino County v. Peters*, 2 Cal. App. 24, was found to contain, and which were held to be

208 sufficient, namely: "The nature of the alteration, the location, general route and termini, the description of the land sought to be taken, AND ITS RELATION TO THE LARGER PARCEL OF WHICH IT IS A PART." (Op. p. 26.)

The complaint in question seeks to condemn nearly 150 separate and distinct parcels.

It delineates them upon a map showing but a part only of the entire tract or tracts of which it is claimed that they are a part, and their gen-
209 eral relation to the entire tract or tracts as a whole cannot, therefore, be ascertained by any inspection of this particular map upon which these parcels are specifically located.

As a part of Exhibit "A" and accompanying this specific map there is a large general map that purports to be a map of the Rancho Topanga Malibu Sequit, and this map contains a sort of general outline of the proposed road
210 through the ranch, but does not show either or any of the innumerable small parcels sought to be condemned on either side of, and as adjuncts to, the main road, nor does it, in our opinion, either as standing alone or as coupled up with the more specific map of the road, but partial map of the ranch, furnish any accurate information by which the relations of these many parcels to the larger parcels from which they are taken can be specifically located or determined.

211 II.

General Uncertainty, Ambiguity and Unintelligibility as to the Defendant May K. Rindge.

At the commencement of paragraph VI, page 114, there is the following allegations: "That the lands described in paragraph II of this complaint embrace *a parcel* of land described as follows, to-wit:" then follows a description by metes and bounds of a 40 foot strip of land.

212 On page 118 is the following allegation: "Also the following described parcels of land, being in division 1 of said Malibu road," etc., followed by separate metes and bounds descriptions of some 21 separate and distinct parcels of land.

On pages 129 and 130 is the following allegation: "That plaintiff is informed and believes and therefore alleges that the defendant May K. Rindge, a widow, is the owner of the parcels of
213 land last above described, sought to be condemned in this action, and that said parcels of land include only a part of an entire tract of land owned by said defendant May K. Rindge, a widow, which said entire tract of land is described as follows, to-wit:"

We contend that it is decidedly uncertain as to whether this paragraph refers to all of the preceding parcels described in paragraph VI, or merely technically to those "last above de-

scribed"—that is, to the 21 "last above described," and that, therefore, the complaint is uncertain, ambiguous and unintelligible in this particular.

III.

Same as to Defendant Rindge Company.

An examination by the court of the allegation at the commencement of page 134 of the allegations commencing with line 14 of page 160; of the allegations commencing at line 25 of page 171; of the allegations commencing at line 8 of page 176; of the allegations commencing at line 1 of page 181; of the allegations commencing at line 22 of page 192; of the allegations commencing at line 1 of page 198; of the allegations commencing with line 13 of page 204; of the allegations commencing at line 24 of page 205; of the allegations commencing at line 16 of page 226; and, finally, of the allegations on page 251, will convince the court that the same defect, although in a greater degree, exists as to the defendant Rindge Company.

Taken literally, the "last above described" "parcels of land" referred to in the allegations on page 231 embrace only those parcels of land specifically following the allegations commencing with "also all the following described parcels of land" at lines 16 and 17 of page 226.

Perhaps we might rely literally upon the strict language of the complaint in this behalf, and

insist that our client in this regard was only charged with the ownership of these last parcels, but we believe the complaint to be sufficiently uncertain, unintelligible and ambiguous in this behalf to warrant the interposition of this demurrer, and to warrant its being made more certain by amendment.

Respectfully submitted,

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Attorneys for Said Defendants.

Endorsed: Received copy of the within demurrer this 28 day of Jan., 1918. A. J. Hill, county counsel; by E. T. Bishop, attorney for plaintiff.

Filed Jan. 28, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

In the Superior Court, county of Los Angeles, state of California. Department No. 16.

Present: Hon. Grant Jackson, judge; Geo. B. Whiteleather, deputy clerk and deputy sheriff.

January 30, 1918.

County of Los Angeles, plaintiff, vs. Rindge Company, *et al.*, defendants.

Case No. B 43572.

Calendar No. 8.

Order Overruling Demurrer to Complaint as Amended.

The demurrers (3) of the defendants F. H. Rindge *et al.*, Rindge Co. and May K. Rindge

220 to the complaint as amended coming on to be heard, are overruled; defendants are given 30 days to answer, and plaintiff is given five days to plead to the answer or to move to strike out.

I hereby certify the foregoing to be a full true and correct copy of an order in the above-entitled cause entered on the minutes of said Superior Court, Department No. 16, in minute book 6, page 36.

221 Attest my hand, and the seal of the said Superior Court, this 2nd day of February, 1918.

(Seal) H. J. LELANDE, *Clerk.*

By M. LOUGHRAN, *Deputy Clerk.*

[TITLE OF COURT AND CAUSE.]

Answer of Defendant Hueneme, Malibu & So. Ry., a Corporation, to Complaint.

222 Now comes the Hueneme, Malibu & Southern Railway, a corporation, one of the defendants in the above-entitled action, and answering the complaint of the plaintiff in said action says:

I.

That it denies according to its information and belief that it is necessary for county purposes, or any county purpose or purposes, or that the public or any interest or convenience or necessity, or either, require the acquisition of an easement in or over the properties, or any part, portion or parcel of the properties, de-

scribed in paragraph II of the complaint for the establishment or maintenance of a public or any highway, or for any other purpose or purposes whatsoever, either as prayed for in the complaint, or otherwise, or at all.

II.

That it denies according to its information and belief that none of the property described in paragraph II of the complaint and sought to be condemned in this action has heretofore been appropriated to any public use, but on the contrary this defendant is informed and believes, and upon its information and belief alleges, that certain portions thereof, the exact descriptions of which this defendant has not as yet been able to definitely ascertain, have been deeded and dedicated to this defendant and to its co-defendant Hueneme, Malibu & Port Los Angeles Railway, a corporation, as and for an easement for a right of way for a steam railroad running between and through more than one county in the state of California, and located upon, along and across a portion of the said lands described in paragraph II of the complaint herein.

III.

That this defendant admits and alleges that it claims an interest in certain of the property described in paragraph II of the complaint herein and sought to be condemned in this action, to-wit: An easement for a right of way for a

steam railroad running between and through more than one county in the state of California, but that it has not as yet been able to sufficiently and definitely ascertain the exact location of its said right of way with reference to the said parcels of land described in paragraph II of the complaint, and that it has not as yet been able to ascertain and estimate the value thereof as to that portion thereof sought to be condemned herein, and has not been able to ascertain the damage which will result to the remainder of its right of way if the said portion of its right of way embraced in the lands described in paragraph II of the complaint should be condemned and taken as prayed in the complaint, and, therefore, it respectfully requests the right to amend this answer in those particulars when it shall have definitely ascertained and determined the facts necessary to such an amendment should such an amendment become and be necessary.

And for another and further and separate answer and defense to this action this defendant alleges:

That it is informed and believes, and on its information and belief alleges, that the above-entitled court is without jurisdiction to try the issues between the plaintiff and this defendant as to the right of the plaintiff to condemn any railroad right of way or easement of this defendant, particularly in this, that this defendant

as a common carrier and as a corporation organized for the purpose of operating and maintaining a steam railroad in and through more than one county of this state is wholly within the jurisdiction of the Railroad Commission of the state of California in the matter of its easements for rights of way.

Wherefore, this defendant prays that the plaintiff take nothing as against it, and that it recover its costs in this behalf expended.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Defendant Hueneme Malibu & So. Railway.

Duly verified.

Endorsed: Received copy of the within answer this 1 day of March, 1918. A. J. Hill, county counsel; by Edward T. Bishop, deputy, attorney for plaintiff.

Filed Mar. 1, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

[TITLE OF COURT AND CAUSE.]

Answer of Defendant Hueneme, Malibu & Port Los Angeles Railway, a Corporation, to Complaint.

Now comes the Hueneme, Malibu & Port Los Angeles Railway, a corporation, one of the defendants in the above-entitled action, and an-

232 swering the complaint of the plaintiff in said action says:

I.

That it denies according to its information and belief that it is necessary for county purposes, or any county purpose or purposes, or that the public or any interest or convenience or necessity, or either, require the acquisition of an easement in or over the properties, or any part, portion or parcel of the properties, described in
233 paragraph II of the complaint for the establishment or maintenance of a public or any highway, or for any other purpose or purposes whatsoever, either as prayed for in the complaint, or otherwise, or at all.

II.

That it denies according to its information and belief that none of the property described in paragraph II of the complaint and sought to
234 be condemned in this action has heretofore been appropriated to any public use, but on the contrary this defendant is informed and believes, and upon its information and belief alleges, that certain portions thereof, the exact descriptions of which this defendant has not as yet been able to definitely ascertain, have been deeded and dedicated to this defendant and to its co-defendant, Hueneme, Malibu & Southern Railway, a corporation, as and for an easement for a right of way for a steam railroad running

235 between and through more than one county in the state of California, and located upon, along and across a portion of the said lands described in paragraph II of the complaint herein.

III.

That this defendant admits and alleges that it claims an interest in certain of the property described in paragraph II of the complaint herein and sought to be condemned in this action, to-wit: An easement for a right of way for a
236 steam railroad running between and through more than one county in the state of California, but that it has not as yet been able to sufficiently and definitely ascertain the exact location of its said right of way with reference to the said parcels of land described in paragraph II of the complaint, and that it has not as yet been able to ascertain and estimate the value thereof as to that portion thereof sought to be condemned
237 herein, and has not been able to ascertain the damage which will result to the remainder of its right of way if the said portion of its right of way embraced in the lands described in paragraph II of the complaint should be condemned and taken as prayed in the complaint, and, therefore, it respectfully requests the right to amend this answer in those particulars when it shall have definitely ascertained and determined the facts necessary to such an amendment should such an amendment become and be necessary.

And for another and further and separate answer and defense to this action this defendant alleges·

That it is informed and believes, and upon its information and belief alleges, that the above-entitled court is without jurisdiction to try the issues between the plaintiff and this defendant as to the right of the plaintiff to condemn any railroad right of way or easement of this defendant, particularly in this, that this defendant as a common carrier and as a corporation organized for the purpose of operating and maintaining a steam railroad in and through more than one county of this state is wholly within the jurisdiction of the Railroad Commission of the state of California in the matter of its easements for rights of way.

Wherefore, this defendant prays that the plaintiff take nothing as against it, and that it recover its costs in this behalf expended.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Defendant Hueneme, Malibu & Port Los Angeles Railway.

Duly verified.

Endorsed: Received copy of the within answer this 1 day of March, 1918. A. J. Hill, county counsel; by Edward T. Bishop, deputy, attorney for plaintiff.

241 Filed Mar. 1, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

[TITLE OF COURT AND CAUSE.]

Answer of Rindge Company to Complaint.

Now comes Rindge Company, a corporation, one of the defendants in the above-entitled action, and answering the complaint of plaintiff in said action says:

242

I.

That it has not sufficient information or belief, or either, to enable it to answer the allegations of paragraph II of said complaint, and, therefore, it denies all and singular, generally and specifically, each and every of the said allegations, and the whole thereof.

II.

That it denies that it is necessary for county
243 purposes, or for any purpose or purposes whatever, or that the public interest or convenience or necessity, or either, require the acquisition of any easement whatever in or over any part or portion of the property described in paragraph II of the complaint for any purpose or purposes whatsoever.

III.

That it denies that the lands in or over which it is necessary to acquire any easement are those, or either or any of those, pieces or parcels of

244 land more particularly, or at all, described in the resolution referred to in the complaint, and set forth in paragraph II thereof, or that it is necessary to acquire any easement whatever for any purpose or purposes whatever over any part or portion of said, or of any of said, lands.

IV.

That it denies according to its information and belief that none of the property described in paragraph II of the complaint and sought to
245 be condemned in this action has heretofore been appropriated to any public use.

V.

That it denies that the alleged public use referred to in the complaint and in paragraph IV thereof is located by the taking of said lands, or any part or portion thereof, in the manner, or in any manner, which will be most, or at all, compatible with the greatest or any public good,
246 or the least or any private injury, or that there is any such, or any necessity for such, public use as in said complaint alleged.

VI.

That it admits that it is the owner of the so-called entire tract of land alleged to contain 13,315.70 acres, and purporting to be described in subdivision "2" of paragraph VI of the complaint as being the tract of land in which the various and sundry other parcels described in said subdivision "2" of paragraph VI are al-

leged to be included, and if the said various and sundry other parcels last referred to are so included in said larger parcel then this defendant admits that it is the owner of each and all and every of them subject to certain easements and rights of way of the defendants Hueneme, Malibu & Southern Ry., and Hueneme, Malibu & Port Los Angeles Ry. for railroad purposes, but that this defendant has not had sufficient opportunity to check up and verify the various descriptions of said last mentioned parcels of land, and respectfully requests and reserves the right to amend this answer in this behalf when it has definitely and accurately ascertained the facts as to said various and sundry pieces and parcels of land last referred to.

VII.

That it denies according to its information and belief that either the defendant Henry W. Keller, or the defendant Pacific Mutual Life Insurance Co. of California, a corporation, or the defendant Pacific Mutual Life Insurance Company, a corporation, or the defendant Rhoda Rindge Adamson, or the defendant Merritt H. Adamson, or the defendant Samuel K. Rindge, or either or any of them, has any interest whatsoever in any part or portion of any of the lands described in the complaint.

87

VIII.

That it denies according to its information and belief that all of the parcels of land sought to be condemned in this action, or either or any of them marked in red upon the map now filed herein as an amendment to the complaint and marked Exhibit "A," are correctly delineated or shown upon said map, or that the larger parcel or which said lands sought to be condemned herein are alleged to be a part is correctly delineated or shown upon said map.

IX.

That this defendant alleges that it has not had sufficient opportunity to check up the various descriptions of the parcels of land described in subdivision "2" of paragraph VI of the complaint, or to ascertain the respective values thereof, or the damages which would accrue to the larger parcel of land of which the parcels alleged to belong to it and sought to be condemned herein form a part by reason of the condemnation and taking of said last mentioned parcels, and, therefore, it respectfully requests the right, should it become necessary, to amend this answer in those regards when the facts necessary for the drafting of such amendment are ascertained by it.

253 Wherefore, this defendant prays that plaintiff take nothing as against it, and that it recover its costs.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Defendant Rindge Co.

Duly verified.

Endorsed: Received copy of the within answer this 1st day of March, 1918. A. J. Hill, county counsel; by Edward T. Bishop, deputy
254 attorney for plaintiff.

Filed Mar. 1, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

[TITLE OF COURT AND CAUSE.]

Answer of Defendant Mary K. Rindge to Complaint.

Now comes May K. Rindge, one of the de-
255 fendants in the above-entitled action, and answering the complaint of plaintiff in said action says:

I.

That she has not sufficient information or belief or either to enable her to answer the allegations of paragraph II of said complaint, and, therefore, she denies all and singular, generally and specifically, each and all of the said allegations, and the whole thereof.

256 II.

That she denies that it is necessary for county purposes, or for any purpose or purposes whatever, or the public interest or convenience or necessity, or either, require the acquisition of an easement, or of any easement, in or over the properties described in paragraph II of the complaint for the establishment or maintenance of a public or any highway, or for any other purpose whatever, either as prayed for in the
257 complaint herein, or otherwise, or at all.

III.

That she denies that the lands in or over which it is necessary to acquire any easement are those, or either or any of those, pieces or parcels of land more particularly or at all described in the resolution referred to in the complaint and set forth in paragraph II thereof, or that it is necessary to acquire any easement
258 whatever for any purpose or purposes whatever, over any part or portion of said, or any of said, lands.

IV.

That she denies according to her information and belief that none of the property described in paragraph II of the complaint and sought to be condemned in this action has heretofore been appropriated to any public use.

259 V.

That she denies that the alleged public use referred to in the complaint and in paragraph IV thereof is located by the taking of said lands, or any part or portion thereof, in the manner, or in any manner, which will be most, or at all, compatible with the greatest or any public good, or the least or any private injury, or that there is any such, or any necessity for such, public use as in said complaint alleged.

260 VI.

That she admits that she is the owner of that portion of the Rancho Topango Malibu Sequit in the county of Los Angeles, state of California, consisting of 1856.75 acres, and described by metes and bounds in paragraph VI of the complaint, and of the whole thereof, and that in so far as the various specific parcels of land described in paragraph VI of the complaint are

261 concerned and alleged to be parts and parcels of said 1856.75 acres, are, as a matter of fact, parts and parcels of said 1856.75 acres that she is the owner thereof; but in this behalf this defendant further alleges that she has had no opportunity to check up or verify the complaint in this behalf, and, therefore, except as hereinabove set forth makes no answer to the same as to her specific ownership of said specific parcels of land, but requests and reserves the right to amend her answer in this behalf when she has

262 fully ascertained all of the facts necessary thereto.

VII.

That she denies according to her information and belief that either the defendant Henry W. Keller, or the defendant Pacific Mutual Life Insurance Co. of California, a corporation, or the defendant Pacific Mutual Life Insurance Co., a corporation, or the defendant Rhoda Rindge Adamson, or the defendant Merritt H.
263 Adamson, or the defendant Samuel K. Rindge, or either or any of them, has any interest whatsoever in any part or portion of any of the lands described in the complaint.

VIII.

That she denies according to her information and belief that all of the parcels of land sought to be condemned in this action, or either or any of them, marked in red upon the map now filed herein as an amendment to the complaint and
264 marked Exhibit "A," are correctly delineated or shown upon said map, or that the larger parcel of which said lands sought to be condemned herein are alleged to be a part is correctly delineated or shown upon said map.

IX.

That this defendant alleges that she has not had sufficient opportunity to check up the various descriptions of the parcels of land described in subdivision "1" of paragraph VI of the com-

plaint, or to ascertain the respective values thereof, or the damages which would accrue to the larger parcel of land of which the parcels alleged to belong to her and sought to be condemned herein form a part by reason of the condemnation and taking of said last mentioned parcels, and, therefore, she respectfully requests the right, should it become necessary, to amend this answer in those regards when the facts necessary for the drafting of such amendment are ascertained by her.

Wherefore, this defendant prays that plaintiff take nothing as against her, and that she recover her costs.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Defendant May K. Rindge.

Duly verified.

Endorsed: Received copy of the within answer this 1 day of March, 1918. A. J. Hill, county counsel; by Edward T. Bishop, deputy, attorney for plaintiff.

Filed Mar. 1, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

268 [TITLE OF COURT AND CAUSE.]

Disclaimer of Defendants Frederick H. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson, Her Husband, and the Pacific Mutual Life Insurance Co., a Corporation, and the Pacific Mutual Life Insurance Co., of Cal., a Corporation.

Now come Frederick H. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson, her hus-
269 band; the Pacific Mutual Life Insurance Company, a corporation, and the Pacific Mutual Life Insurance Company of California, a corporation, defendants in the above entitled action, and each for himself and not for the other, expressly disclaims any interest of any kind or character in or to any part or parcel of the property described in the complaint in said action.

Dated February 28th, 1918.

ANDERSON & ANDERSON,
270 NATHAN NEWBY,
Attorneys for Said Disclaiming Defendants.

Endorsed: Received copy of the within disclaimer this 1 day of March, 1918. A. J. Hill, county counsel; by Edward T. Bishop, deputy, attorney for plaintiff.

Filed Mar. 1, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

271 [TITLE OF COURT AND CAUSE.]

Disclaimer of Samuel K. Rindge, Defendant.

Comes now Samuel K. Rindge, defendant in the above entitled action, and in reply to the complaint of the plaintiff above named, disclaims and alleges that he has no right, title or interest in or to the property described in said complaint, or in any part thereof.

Dated Los Angeles, Cal., March 4th, 1918.

272 SAMUEL K. RINDGE.

State of California, County of Los Angeles—ss.

On this 4th day of March, in the year nineteen hundred and eighteen, A. D., before me, J. H. Schenck, a notary public in and for the said county of Los Anegles, state of California, residing therein, duly commissioned and sworn, personally appeared Samuel K. Rindge, personally known to me to be the person whose name is
273 subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

(Seal) J. H. SCHENCK,

Notary Public in and for Los Angeles County, State of California.

Endorsed: Filed Mar. 13, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

274 [TITLE OF COURT AND CAUSE.]

Demurrer of Plaintiff to Answer of Hueneme, Malibu & So. Railway, a Corporation.

Comes now the plaintiff County of Los Angeles and by way of demurrer to the answer of the Hueneme, Malibu & So. Railway, a corporation, the defendant in the above entitled action, plaintiff alleges:

That the further and separate answer and
275 defense of said defendant; that is, that portion of said answer beginning with line 30 of page 2 to and including line 9 of page 3 thereof, does not, nor does any portion thereof, state facts sufficient to constitute an answer or a defense in the above entitled action.

A. J. HILL,
County Counsel, and
EDWARD T. BISHOP,
Deputy County Counsel,
276 *Attorneys for Plaintiff County of Los Angeles.*

AUTHORITY IN SUPPORT OF DEMURRER.

"The procedure provided in section forty-seven (b) of this act shall be considered as alternative and cumulative and not exclusive and the political subdivision shall continue to have the right to pursue any other procedure now or hereafter established providing for the acquisition under eminent domain proceedings of the lands, property and rights, or any part or

277 portion thereof, of any public utility, and section forty-seven (b) of this act shall not be construed as repealing any law of this state providing for such eminent domain proceedings * * *." (Subd. 11, Sec. 47b, Public Utilities Act.)

Endorsed: Received copy of the within this 16 day of Mch., 1918. Anderson & Anderson, Nathan Newby, attorney for dft.

Filed Mar. 18, 1918. H. J. Lelande, clerk;
278 by R. F. Gragg, deputy.

[TITLE OF COURT AND CAUSE.]

Demurrer of Plaintiff to Answer of Hueneme, Malibu and Port Los Angeles Railway, a Corporation.

Comes now the plaintiff County of Los Angeles and by way of demurrer to the answer of
279 the Hueneme, Malibu and Port Los Angeles Railway, a corporation, the defendant in the above entitled action, plaintiff alleges:

That the further and separate answer and defense of said defendant; that is, that portion of said answer beginning with line 30 of page 2 to and including line 9 of page 3 thereof, does not, nor does any portion thereof, state facts

sufficient to constitute an answer or a defense in the above entitled action.

A. J. HILL,
County Counsel,
By EDWARD T. BISHOP,
Deputy County Counsel,
Attorneys for Plaintiff County of Los Angeles.

AUTHORITY IN SUPPORT OF DEMURRER.

"The procedure provided in section forty-seven (b) of this act shall be considered as alternative and cumulative and not exclusive and the political subdivision shall continue to have the right to pursue any other procedure now or hereafter established providing for the acquisition under eminent domain proceedings of the lands, property and rights, or any part or portion thereof, of any public utility, and section forty-seven (b) of this act shall not be construed as repealing any law of this state providing for such eminent domain proceedings * * *."
(Subd. 11, Sec. 47b, Public Utilities Act.)

Endorsed: Received copy of the within this 16 day of Mch., 1918. Anderson & Anderson, Nathan Newby, attorney dft.

Filed Mar. 18, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

283 In the Superior Court, county of Los Angeles, state of California. Department No. 16.

Present: Hon. L. H. Valentine, judge; L. A. Hill, deputy clerk and deputy sheriff.

March 22, 1918.

County of Los Angeles, plaintiff, vs. Rindge Co. *et al.*, defendants.

Case No. B 43572.

Calendar No. 5.

284 **Order Sustaining Demurrers of Plaintiff to Answers.**

The demurrers (2) of the plaintiff to the answers of Hueneme, Malibu & Port L. A. Ry. and Hueneme, Malibu & So. Ry., coming on to be heard, are sustained; defendants are given 3 days to amend and plaintiff is given five days to plead to the amended answers or to move to strike out.

Notice waived.

285 I hereby certify the foregoing to be a full, true and correct copy of an order in the above-entitled cause entered on the minutes of said Superior Court, Department No. 16, in minute book 6, page 128.

Attest my hand, and the seal of the said Superior Court, this 25th day of March, 1918.

(Seal) H. J. LELANDE, *Clerk.*

By M. LOUGHRAN, *Deputy Clerk.*

286 [TITLE OF COURT AND CAUSE.]

Amended Answer of Defendant May K. Rindge.

Now comes May K. Rindge, one of the defendants in the above-entitled action, and by leave of the court first had and obtained files this, her amended answer to the complaint of plaintiff therein as amended, and says:

I.

287 That she admits the allegations of paragraph I of said complaint.

II.

That she has not sufficient knowledge, information or belief or either to enable her to answer paragraph II of said complaint, and, therefore, she denies generally and specifically, all and singular, each and every of the said allegations, and the whole thereof.

III.

288 That she denies that it is necessary for county purposes, or for any purpose or purposes whatever, or at all, or that the public or any interest or convenience or necessity or either requires the acquisition of an or any easement in or over the properties, or any part or portion thereof, described in paragraph II of the said complaint for the establishment or maintenance of a public or any highway either as prayed for in said complaint, or otherwise, or at all.

289 IV.

That she denies that it is necessary to acquire said or any easement in or over any part or portion of the lands, or the pieces or parcels of land, or in or over any part or portion of either or any of them, described in paragraph II of said complaint, or in the alleged resolution set forth in paragraph II of said complaint;

That she denies, according to her information and belief, that none of the property described
290 in paragraph II of said complaint and sought to be condemned in this action has heretofore, or prior to the commencement of this action, been appropriated to any public use;

That she denies that there is any public use sought in this action for which said, or any part of said, lands can be condemned, or to which they, or any part of them, can be subjected; and she denies that the alleged and attempted public use attempted to be set forth and alleged in said
291 complaint is located by the taking of said, or any part or portion of said, lands in the manner, or in any manner, which will be most, or at all, compatible with the greatest or any public good, or any good whatever, or with the least private injury.

V.

That she denies, according to her information and belief, that all of the persons whose names are set forth in the title of this action are own-

292 ers or claimants of the property sought to be condemned herein, or of any part or portion thereof.

VI.

That she admits and alleges that she is the owner in fee absolute of the parcels of land first described and ending wth parcel 20-A in subdivision 1 of paragraph VI of said complaint, and of each and all of them, and that said parcels of land include only a part of an entire tract of
293 land owned by this defendant which is also described in subdivision 1 of paragraph VI of said complaint.

That she denies, according to her information and belief, that the defendants Pacific Mutual Life Insurance Company of California, a corporation; Pacific Mutual Life Insurance Company, a corporation; Samuel K. Rindge, Rhoda Rindge Adamson and Merritt H. Adamson have, or that
294 either of them has, any interest whatever of any kind or character either as alleged in said complaint, or otherwise, or at all, in or to any part or portion of the lands set forth and described in subdivision 1 of paragraph VI of said complaint, and alleged to be the property of this defendant.

That she admits that the lands described in paragraph II of said complaint embrace the various parcels of land described in subdivision 2 of paragraph VI of said complaint, ending

295 with parcel No. 146 thereof, and that said last mentioned parcels of land include only a part of an entire tract owned by the defendant Rindge Company, which is also described in subdivision 2 of paragraph VI of said complaint.

That she denies, according to her information and belief, that the defendants Henry W. Keller, Samuel K. Rindge, this defendant (other than as a stockholder in the Rindge Company),
296 Rhoda Rindge Adamson, or Merritt H. Adamson, have, or that either of them has, any interest whatever of any kind or character either as alleged in said complaint, or otherwise, or at all, in or to any part or portion of the lands set forth and described in subdivision 2 of paragraph VI of said complaint, and therein alleged to be the property of the defendant Rindge Company.

VII.

297 That she admits the allegations of paragraph VII of said complaint.

VIII.

That she has not sufficient knowledge, information or belief, or either, to enable her to answer the allegations of paragraph VIII of said complaint, and, therefore, she denies generally and specifically, all and singular, each and every of the said allegations, and the whole thereof.

298 ~~IX.~~

~~That she denies, according to her information and belief, that the map filed herein by way of amendment to said complaint and marked Exhibit "A" correctly delineates the parcels of land sought to be condemned herein; but just to what extent it is deficient and incorrect in these regards this defendant has not sufficient knowledge, information or belief to aver.~~

[Stricken out by order of court Tuesday, Oct.
299 1, 1918. H. J. Lelande, clerk; by E. C. Polsue, deputy.]

And as another and further and separate answer and defense herein defendant alleges:

That she is informed and believes, and upon her information and belief alleges, that there has been no consideration or determination by the board of supervisors of the county of Los Angeles, state of California, of any of the matters or things alleged in the complaint herein
300 as amended, and particularly of the matters or things alleged in paragraph II of said complaint as amended, and that the said alleged resolution referred to in paragraph II of the said complaint as amended was arbitrarily adopted by the said board of supervisors of Los Angeles county without any consideration of the matters or things therein contained, and without the exercise of any discretion therein, and well knowing that there was no room for the exer-

301 cise of any discretion therein, but on the contrary knowing full well that all of the property proposed to be taken for a public road and highway and to be condemned as in said resolution set forth and as in said complaint as amended alleged was not, and could not be, necessary for any public use of any kind or character whatever, and particularly in this that it is located wholly and solely upon and within the confines of private property, and cannot under any cir-
302 cumstances afford any accommodation of any kind or character to the traveling public, or any part or portion thereof, and that, therefore. the taking of the same for any alleged highway purposes would be without due process of law, and in violation of the provisions of the fourteenth amendment to the Constitution of the United States, and that the taking of said property under said resolution for public highway or other purposes would be void, and would be
303 a denial to this defendant and the other owners of said property sought to be condemned of the equal protection of the laws under the Constitution of the United States, and would contravene the fourteenth amendment to the said Constitution of the United States.

~~And for another and further and separate answer and defense this defendant alleges:~~

304 I.

That all of the properties described in paragraphs II and VI of the complaint and in any way involved in this action are entirely upon and within the boundaries of that certain ranch situate in the county of Los Angeles, state of California, commonly known as the Malibu Ranch.

II.

305 That while a portion of said Malibu Ranch is owned by the defendant May K. Rindge, and the remaining portion thereof by the defendant Rindge Company, the said ranch as a whole is now, and was at the commencement of this action, and for more than twenty years prior thereto had been, treated, operated, managed and controlled as a single ranch under one joint management and control; and has at no time ever been severed or segregated into parts or
306 parcels or treated or handled or managed by the owners thereof as other than a single ranch and holding.

III.

That said method of holding, managing and controlling said ranch by its said two owners has at all times been known to the plaintiff and to the public in general.

[Stricken out by order of court Tuesday, Oct. 1, 1918. H. J. Lelande, clerk; by E. C. Polsue, deputy.]

307 IV.

That said Malibu Ranch as such and under that name and designation and as embraced in the original purchase of the same by the defendant May K. Rindge and the predecessor in interest of the defendant Rindge Company at the point where the proposed road sought to be condemned herein terminates at the westerly end of said road, ends at and upon the boundary line between the counties of Los Angeles and
308 Ventura, state of California; but that the defendant Rindge Company is the owner and in the possession of, and was at the date of the commencement of this action, the owner and in the possession of property immediately adjacent thereto in the said county of Ventura, and forming a continuation into said county of Ventura for a distance of about 1¾ miles of the said ranch under the said joint management and
309 control of the said defendants May K. Rindge and Rindge Company.

V.

That there was not at the commencement of this action and is not now in the said county of Ventura at any point either contiguous to or upon any part or portion of said property of the Rindge Company or within 10 miles of the western, that is to say, the Ventura county, end of said ranch any public road of any kind or character whatever; and that said ranch can be

310 reached from said end only and wholly by private trails and ways.

VI.

That there was not at the commencement of this action, and is not now, any public road or way of any kind or character either upon that portion of said Malibu Ranch located in Los Angeles county or upon that extension of the same in Ventura county; and that the said proposed road or highway sought to be condemned
311 and taken in this action would, if condemned and taken, be located wholly and solely upon that portion of the said Malibu Ranch situated in Los Angeles county, would end and terminate upon the private property of the defendant Rindge Company at the Ventura county line; would have no laterals or outlets or feeders of any kind or character; would be located wholly and solely upon, and give access wholly and solely to, the private ranch property of the de-
312 fendants May K. Rindge and Rindge Company; and would not and could not furnish any way of necessity or convenience to the general public or for public use or travel.

[Stricken out by order of court. Tuesday, Oct. 1, 1918. H. J. Lelande, clerk; by E. C. Polsue, deputy.]

VII.

That neither of said defendants owners of and jointly managing and controlling said Mal-

313 ibu Ranch as a whole, has any need or desire for said or any public road upon said ranch or upon any part or portion thereof; but that, on the contrary, any such public road would be a constant and continuous menace and damage to their said ranch property, and would largely destroy its value as a unit for ranch purposes; and would be and constitute a continual nuisance and expense to the said defendants.

VIII.

314 That by reason of the premises the taking of any part or portion of said property as contemplated by the plaintiff and as prayed for in the complaint for road or highway purposes would be without necessity of any kind or right, and in contravention of the provisions of the Constitution of the United States, and particularly in violation of the Fourteenth Amendment to said Constitution, and would be void and without due process of law, and constitute a denial
315 to the defendants May K. Rindge and Rindge Company of the equal protection of the laws under the Constitution of the United States, and would contravene the said fourteenth amendment to said Constitution.

[Stricken out by order of court Tuesday, Oct. 1, 1918. H. J. Lelande, clerk; by E. C. Polsue, deputy.]

And for another and further and separate answer and defense this defendant alleges:

316 I.

That the value of the parcel of land first described in subdivision 1 of paragraph VI of the complaint as amended was, at the date of the filing of the original complaint herein, the sum of $10,000.00.

II.

That the respective values of each of the remaining parcels of land described in said subdivision 1 of paragraph VI of the complaint as
317 amended were, at the time of the commencement of this action, respectively as follows, to-wit:

Parcel	No.	1	the	sum	of.....	$ 1.45
"	"	2	"	"	.....	2.38
"	"	3	"	"	.....	5.95
"	"	4	"	"	.....	8.40
"	"	5	"	"	.....	5.25
"	"	6	"	"	.....	12.25
"	"	7	"	"	.....	4.20
"	"	8	"	"	.....	22.40
"	"	9	"	"	.....	20.65
"	"	10	"	"	.....	11.90
"	"	11	"	"	.....	.98
"	"	12	"	"	.....	15.05
"	"	13	"	"	.....	11.90
"	"	14	"	"	.....	2.75
"	"	15	"	"	.....	4.90
"	"	16	"	"	.....	4.90
"	"	17	"	"	.....	2.17
"	"	18	"	"	.....	2.60

318

319	"	"	19	"	"	.....	1.05
	"	"	20	"	"	.....	10.20
	"	"	20-A	"	"	.....	17.85
							$169.18

III.

That the damage and detriment to the larger parcel of land of which the said parcels of land described in subdivision 1 of paragraph VI of said complaint as amended form a part by rea-
320 son of the taking of said parcels of land for the purposes alleged in said complaint as amended will not be less than the sum of $20,000.00.

Wherefore, this defendant prays that plaintiff take nothing as against her, and that she recover her costs; or, in the event said land of this defendant is condemned and taken, that she have and recover the sum of $30,169/18 as damages, and her costs of suit.

321 ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Said Defendant.

Duly verified.

Endorsed: Received copy of the within amended answer this 25 day of Sept., 1918. A. J. Hill, Paul Vallee, attorney for plaintiff.

Filed Sep. 25, 1918. H. J. Lelande, clerk; by F. J. Adams, deputy.

322 [TITLE OF COURT AND CAUSE.]

Amended Answer of Defendants Rindge Company.

Now comes Rindge Company, one of the defendants in the above-entitled action, and by leave of the court first had and obtained files this, its amended answer to the complaint of plaintiff therein as amended, and says:

I.

323 That it admits the allegations of paragraph I of said complaint.

II.

That it has not sufficient knowledge, information or belief or either to enable it to answer paragraph II of said complaint, and, therefore, it denies generally and specifically, all and singular, each and every of the said allegations, and the whole thereof.

III.

324 That it denies that it is necessary for county purposes, or for any purpose or purposes whatever, or at all, or that the public or any interest or convenience or necessity or either requires the acquisition of an or any easement in or over the properties, or any part or portion thereof, described in paragraph II of the said complaint for the establishment or maintenance of a public or any highway either as prayed for in said complaint, or otherwise, or at all.

325 IV.

That it denies that it is necessary to acquire said or any easement in or over any part or portion of the lands, or the pieces or parcels of land, or in or over any part or portion of either or any of them, described in paragraph II of said complaint, or in the alleged resolution set forth in paragraph II of said complaint;

That it denies, according to its information and belief, that none of the property described
326 in paragraph II of said complaint and sought to be condemned in this action has heretofore, or prior to the commencement of this action, been appropriated to any public use;

That it denies that there is any public use sought in this action for which said, or any part of said, lands can be condemned, or to which they, or any part of them, can be subjected; and it denies that the alleged and attempted public
327 use attempted to be set forth and alleged in said complaint is located by the taking of said, or any part or portion of said, lands in the manner, or in any manner, which will be most, or at all, compatible with the greatest or any public good, or any good whatever, or with the least private injury.

V.

That it denies, according to its information and belief, that all of the persons whose names are set forth in the title of this action are own-

328 ers or claimants of the property sought to be condemned herein, or of any part or portion thereof.

VI.

That it admits and alleges that May K. Rindge is the owner in fee absolute of the parcels of land first described and ending with parcel 20-A in subdivision 1 of paragraph VI of said complaint, and of each and all of them, and that said parcels of land include only a part of
329 an entire tract of land owned by said defendant May K. Rindge, which is also described in subdivision 1 of paragraph VI of said complaint;

That it denies, according to its information and belief, that the defendants Pacific Mutual Life Insurance Company of California, a corporation; Pacific Mutual Life Insurance Company, a corporation; Samuel K. Rindge, Rhoda Rindge Adamson and Merritt H. Adamson have, or that either of them has, any interest whatever
330 of any kind or character either as alleged in said complaint, or otherwise, or at all, in or to any part or portion of the lands set forth and described in subdivision 1 of paragraph VI of said complaint, and alleged to be the property of said defendant May K. Rindge;

That it admits that the lands described in paragraph II of said complaint embrace the various parcels of land described in subdivision 2 of paragraph VI of said complaint, ending

331 with parcel No. 146 thereof, and that said last mentioned parcels of land include only a part of an entire tract owned by this defendant, Rindge Company, which is also described in subdivision 2 of paragraph VI of said complaint, and that said parcels described in subdivision 2 of paragraph VI of the complaint are the property of and are owned by this defendant;

That it denies, according to its information and belief, that the defendants Henry W. Keller,
332 Samuel K. Rindge, the defendant May K. Rindge (other than as a stockholder in the Rindge Company), Rhoda Rindge Adamson, or Merritt H. Adamson, have, or that either of them has, any interest whatever of any kind or character either as alleged in said complaint, or otherwise, or at all, in or to any part or portion of the lands set forth and described in subdivision 2 of paragraph VI of said complaint, and
333 therein alleged to be the property of this defendant, Rindge Company.

VII.

That it admits the allegations of paragraph VII of said complaint.

VIII.

That it has not sufficient knowledge, information or belief, or either, to enable it to answer the allegations of paragraph VIII of said complaint and, therefore, it denies generally and

334 specifically, all and singular, each and every of the said allegations, and the whole thereof.

IX.

~~That it denies, according to its information and belief, that the map filed herein by way of amendment to said complaint and marked Exhibit "A" correctly delineates the parcels of land sought to be condemned herein: but just to what extent it is deficient and incorrect in these regards this defendant has not sufficient knowl-~~

335 ~~edge, information or belief to aver.~~

[Stricken out by order of court Tuesday, Oct. 1, 1918. H. J. Lelande, clerk; by E. C. Polsue, deputy.]

And as another and further and separate answer and defense herein defendant alleges:

That it is informed and believes, and upon its information and belief alleges, that there has been no consideration or determination by the board of supervisors of the county of Los An-

336 geles, state of California, of any of the matters or things alleged in the complaint herein as amended, and particularly of the matters or things alleged in paragraph II of said complaint as amended, and that the said alleged resolution referred to in paragraph II of the said complaint as amended was arbitrarily adopted by the said board of supervisors of Los Angeles county without any consideration of the matters or

337 things therein contained, and without the exercise of any discretion therein, and well knowing that there was no room for the exercise of any discretion therein, but on the contrary knowing full well that all of the property proposed to be taken for a public road and highway and to be condemned as in said resolution set forth and as in said complaint as amended alleged was not, and could not be, necessary for any public use of any kind or character whatever, and particu-
338 larly in this that it is located wholly and solely upon and within the confines of private property, and cannot under any circumstances afford any accommodation of any kind or character to the traveling public, or any part or portion thereof. and that, therefore, the taking of the same for any alleged highway purposes would be without due process of law, and in violation of the provisions of the fourteenth amendment to the Con-
339 stitution of the United States, and that the taking of said property under said resolution for public highway or other purposes would be void, and would be a denial to this defendant and the other owners of said property sought to be condemned of the equal protection of the laws under the Constitution of the United States, and would contravene the fourteenth amendment to the said Constitution of the United States.

340 And for another and further and separate answer and defense herein this defendant alleges:

I.

That the value of the parcel of land first described in subdivision 2 of paragraph VI of the complaint as amended was at the date of the filing of the original complaint herein the sum of $25,000.

II.

341 That the respective values of each of the remaining parcels of land described in said subdivision 2 of paragraph VI of the complaint as amended were at the time of the commencement of this action respectively as follows, to-wit:

Parcel	No.	21	the	sum	of.....	$ 5.25
"	"	21–A	"	"	.....	7.70
"	"	22	"	"	.....	1.22
"	"	23	"	"	.....	.49
"	"	24	"	"	.....	29.05
"	"	25	"	"	.....	33.95
"	"	26	"	"	.....	17.50
"	"	27	"	"	.....	21.35
"	"	28	"	"	.....	3.50
"	"	29	"	"	.....	.63
"	"	30	"	"	.....	8.40
"	"	31	"	"	.....	9.10
"	"	32	"	"	.....	8.75
"	"	33	"	"	.....	3.85
"	"	34	"	"	.....	86.45

342

343	"	"	35	"	"	.....	43.05
	"	"	36	"	"	.....	312.20
	"	"	37	"	"	.....	303.80
	"	"	38	"	"	.....	17.50
	"	"	39	"	"	.....	21.35
	"	"	40	"	"	.....	.42
	"	"	41	"	"	.....	.95
	"	"	42	"	"	.....	7.00
	"	"	43	"	"	.....	11.90
	"	"	44	"	"	.....	8.05
344	"	"	45	"	"	.....	1.89
	"	"	46	"	"	.....	2.41
	"	"	47	"	"	.....	1.50
	"	"	48	"	"	.....	.42
	"	"	49	"	"	.....	1.15
	"	"	50	"	"	.....	23.10
	"	"	51	"	"	.....	12.95
	"	"	52	"	"	.....	.73
	"	"	53	"	"	.....	.42
345							$1,007.98
						Fwd.	1,007.98
	Parcel	No.	54	the	sum	of..... $	.59
	"	"	55	"	"	"	.80
	"	"	56	"	"	"	22.75
	"	"	57	"	"	"	10.15
	"	"	58	"	"	"	.66
	"	"	59	"	"	"	.94
	"	"	60	"	"	"	.80
	"	"	61	"	"	"	10.85

346	"	"	62	"	"	"	..... .24
	"	"	63	"	"	"	..... 25.55
	"	"	64	"	"	"	..... 2.41
	"	"	65	"	"	"	..... 1.82
	"	"	66	"	"	"	..... 9.80
	"	"	67	"	"	"	..... 1.12
	"	"	68	"	"	"	..... 6.30
	"	"	69	"	"	"	..... 5.60
	"	"	70	"	"	"	..... 3.50
	"	"	71	"	"	"	..... 5.95
347	"	"	72	"	"	"	..... 1.71
	"	"	73	"	"	"	..... .91
	"	"	74	"	"	"	..... .80
	"	"	75	"	"	"	..... 7.00
	"	"	76	"	"	"	..... 2.41
	"	"	77	"	"	"	..... 5.95
	"	"	78	"	"	"	..... 3.18
	"	"	79	"	"	"	..... .49
	"	"	80	"	"	"	..... .91
348	"	"	81	"	"	"	..... 1.22
	"	"	82	"	"	"	..... .80
	"	"	83	"	"	"	..... .59
	"	"	84	"	"	"	..... .59
	"	"	85	"	"	"	..... .17
	"	"	86	"	"	"	..... 3.32
							$1,147.86
							$1,147.86
	Parcel No.		87	the sum of			.....$ 1.78
	"	"	88	"	"	"	..... 7.35

349	"	"	89	"	"	.....	.70
	"	"	90	"	"	.....	4.55
	"	"	91	"	"	.....	4.90
	"	"	92	"	"	.....	5.60
	"	"	93	"	"	.....	3.85
	"	"	94	"	"	.....	3.85
	"	"	95	"	"	.....	2.55
	"	"	96	"	"	.....	.80
	"	"	97	"	"	.....	9.45
	"	"	98	"	"	.....	17.85
350	"	"	98–A	"	"	.....	.38
	"	"	99	"	"	.....	9.10
	"	"	100	"	"	.....	2.66
	"	"	101	"	"	.....	2.45
	"	"	102	"	"	.....	9.45
	"	"	103	"	"	.....	2.00
	"	"	104	"	"	.....	3.50
	"	"	105	"	"	.....	1.64
	"	"	106	"	"	.....	1.15
351	"	"	107	"	"	.....	2.27
	"	"	108	"	"	.....	.77
	"	"	109	"	"	.....	.38
	"	"	110	"	"	.....	1.19
	"	"	111	"	"	.....	.80
	"	"	112	"	"	.....	.80
	"	"	113	"	"	.....	7.35
	"	"	114	"	"	.....	6.65
	"	"	115	"	"	.....	2.10
	"	"	116	"	"	.....	5.25

352	"	"	117	"	"	..... 6.30
	"	"	118	"	"	..... 3.25
						$1,280.53
						$1,280.53
	Parcel	No.	119	the sum of		..... $ 3.15
	"	"	120	"	"	..... .56
	"	"	121	"	"	..... 1.68
	"	"	122	"	"	..... .38
	"	"	123	"	"	..... .80
353	"	"	124	"	"	..... 1.92
	"	"	125	"	"	..... 1.29
	"	"	126	"	"	..... 5.60
	"	"	127	"	"	..... 3.04
	"	"	128	"	"	..... 9.45
	"	"	129	"	"	..... 9.10
	"	"	130	"	"	..... 3.80
	"	"	131	"	"	..... 2.41
	"	"	132	"	"	..... .80
	"	"	133	"	"	..... 17.50
354	"	"	134	"	"	..... 19.60
	"	"	135	"	"	..... 4.20
	"	"	136	"	"	..... 3.80
	"	"	137	"	"	..... .63
	"	"	138	"	"	..... 2.06
	"	"	139	"	"	..... 1.33
	"	"	140	"	"	..... 1.15
	"	"	141	"	"	..... .80
	"	"	142	"	"	..... .21
	"	"	143	"	"	..... .28

355	"	"	144	"	"	.....	2.00
	"	"	145	"	"	.....	7.70
	"	"	146	"	"	.....	6.65
							$1,392.42

III.

That the damage and detriment to the larger parcel of land of which the said parcels of land described in subdivision 2 of paragraph VI of said complaint as amended form a part by rea-
356 son of the taking of said parcels of land for the purposes alleged in said complaint as amended will not be less than the sum of $60,000.00.

And for another and further and separate answer and defense this defendant alleges:

I.

That all of the properties described in paragraphs II and VI of the complaint and in any way involved in this action are entirely upon and
357 within the boundaries of that certain ranch situate in the county of Los Angeles, state of California, commonly known as the Malibu Ranch.

II.

That while a portion of said Malibu Ranch is owned by the defendant May K. Rindge, and the remaining portion thereof by the defendant Rindge Company, the said ranch as a whole is now, and was at the commencement of this action, and for more than twenty years prior thereto had been, treated, operated, managed and

358 controlled as a single ranch under one joint management and control; and has at no time ever been severed or segregated into parts or parcels or treated or handled or manager by the owners thereof as other than a single ranch and holding.

III.

That said method of holding, managing and controlling said ranch by its said two owners has at all times been known tc the plaintiff and to
359 the public in general.

IV.

That said Malibu Ranch as such and under that name and designation and as embraced in the original purchase of the same by the defendant May K. Rindge, and the predecessor in interest of the defendant Rindge Company, at the point where the proposed road sought to be condemned herein terminates at the westerly
360 end of said road, ends at and upon the boundary line between the counties of Los Angeles and Ventura, state of California; but that the defendant Rindge Company is the owner and in the possession of, and was at the date of the commencement of this action, the owner and in the possession of property immediately adjacent thereto in the said county of Ventura, and forming a continuation into said county of Ventura for a distance of about 1¾ miles of the said ranch under the said joint management and

361 control of the said defendants May K. Rindge and Rindge Company.

V.

That there was not at the commencement of this action and is not now in the said county of Ventura at any point either contiguous to or upon any part or portion of said property of the Rindge Company or within 10 miles of the western, that is to say, the Ventura county, end of said ranch any public road of any kind or
362 character whatever; and that said ranch can be reached from said end only and wholly by private trails and ways.

VI.

That there was not at the commencement of this action, and is not now, any public road or way of any kind or character either upon that portion of said Malibu Ranch located in Los Angeles county, or upon that extension of the
363 same in Ventura county; and that the said proposed road or highway sought to be condemned and taken in this action would, if condemned and taken, be located wholly and solely upon that portion of the said Malibu Ranch situated in Los Angeles county, would end and terminate upon the private property of the defendant Rindge Company at the Ventura county line; would have no laterals or outlets or feeders of any kind or character; would be located wholly and solely upon, and give access wholly and

364 solely to, the private ranch property of the defendants May K. Rindge and Rindge Company; and would not and could not furnish any way of necessity or convenience to the general public or for public use or travel.

VII.

That neither of said defendants owners of and jointly managing and controlling said Malibu Ranch as a whole, has any need or desire for said or any public road upon said ranch or upon
365 any part or portion thereof; but that, on the contrary, any such public road would be a constant and continuous menace and damage to their said ranch property, and would largely destroy its value as a unit for ranch purposes; and would be and constitute a continual nuisance and expense to the said defendants.

VIII.

That by reason of the premises the taking of
366 any part or portion of said property as contemplated by the plaintiff and as prayed for in the complaint for road or highway purposes would be without necessity of any kind or right, and in contravention of the provisions of the Constitution of the United States, and particularly in violation of the fourteenth amendment to said Constitution, and would be void and without due process of law, and constitute a denial to the defendants May K. Rindge and Rindge Company of the equal protection of the laws

367 under the Constitution of the United States, and would contravene the said fourteenth amendment to said Constitution.

Wherefore, this defendant prays that plaintiff take nothing as against it, and that it recover its costs; or, in the event said land of this defendant is condemned and taken, that it have and recover the sum of $86,392/92 as damages, and its costs of suit.

368 ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Said Defendant.

Duly verified.

Endorsed: Received copy of the within amended answer this 25 day of Sept., 1918. A. J. Hill & Paul Vallee, attorney for plaintiff.

Filed Sep. 25, 1918. H. J. Lelande, clerk; by F. J. Adams, deputy.

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369 [TITLE OF COURT AND CAUSE.]

Disclaimer of Defendant H. W. Keller.

I hereby disclaim any right, title or interest in or to the property described in the complaint in the above entitled action and in any portion thereof.

Dated this 14 day of December, 1918.

H. W. KELLER,
Defendant.

370 Endorsed: Filed Dec. 16, 1918. H. J. Lelande, clerk; by F. D. Doyle, deputy.

[TITLE OF COURT AND CAUSE.]

Verdict Main Road Case.

1. What at the date of the trial, September 30th, 1918, was the actual market value of the land sought to be taken from defendant May K. Rindge?

371 Answer. (Forty foot strip $2324.70
(
(Additional parcels $ 228.57
Total $2553.27

2. What, at said date, was the actual market value of the improvements pertaining to the realty on the land sought to be taken from defendant May K. Rindge?

Answer. $153.00

3. Will the remaining portion of defendant
372 May K. Rindge's land, not sought to be taken, be damaged by reason of the severance therefrom of the part which is sought to be taken?

Answer. Yes
(Yes or No)

4. If your answer to the last interrogatory was in the affirmative, what do you find the amount of such severance damage to be?

Answer. $1162.35

373 5. How many miles of fencing will it be necessary to construct on the property of defendant May K. Rindge by reason of the taking and use for public highway purposes of the land sought to be taken from defendant May K. Rindge? This question must be answered in the light of the concession of the plaintiff as to the necessity of a fence which I have quoted in the instructions given.

Answer. 6.6 miles

374 Six & 6/10 miles

6. What kind of fencing will be suitable to be constructed on the land of defendant May K. Rindge by reason of such taking and use of her land sought to be taken?

Answer. Thirty six inch woven wire with two barbed wires above with suitable posts.

7. What will be the cost of such fencing on the land of defendant May K. Rindge?

375 Answer. $550 00/" per mile

Or total of—$3630 do/"

8. What, at the date of the trial, September 30th, 1918, was the actual market value of the land sought to be taken from defendant Rindge Company?

Answer. (Forty foot strip $6456.10

(Additional parcels $1278.77

Total $7734.87

376 9. What, at said date, was the actual market value of the improvements pertaining to the realty on the land sought to be taken from defendant Rindge Company?

Answer. $1234.50

10. Will the remaining portion of defendant Rindge Company's land, not sought to be taken, be damaged by reason of the severance therefrom of the part which is sought to be taken?

377 Answer. Yes

(Yes or No)

11. If your answer to the last interrogatory was in the affirmative, what do you find the amount of such severance damage to be?

Answer. $2696.00

12. How many miles of fencing will it be necessary to construct on the property of defendant Rindge Company by reason of the taking and use for public highway purposes of the
378 land sought to be taken from defendant Rindge Company?

Answer. 29——miles.

13. What kind of fencing will be suitable to be constructed on the land of defendant Rindge Company by reason of such taking and use of its land sought to be taken?

Answer. Thirty six inch woven wire with two barbed wires above with suitable posts.

14. What will be the cost of such fencing on the land of defendant Rindge Company?

379 Answer. $(650 00/") $18,850./00
(per mile)

15. What, at the date of the trial, September 30th, 1918, was the actual market value of the land sought to be taken from defendant Hueneme, Malibu and Southern Railroad Company?

Answer. (Forty foot strip $59.06
(Additional parcels $ 7.69
Total $66.75

380 16. What, at said date, was the actual market value of the improvements pertaining to the realty on the land sought to be taken from defendant Hueneme, Malibu and Southern Railroad Company?

Answer. $—0

17. What, at said date, was the actual market value of the land sought to be taken from the defendant Hueneme, Malibu and Port Los
381 Angeles Railroad Company?

Answer. $—0

We, the jury, ascertain and assess the compensation to be paid to the several defendants herein in accordance with answers to the foregoing interrogatories.

JAS. A. WILLIAMS,
Foreman.

Endorsed: Filed Dec. 19, 1918. H. J. Lelande, clerk; by E. C. Polsue, deputy.

382 [TITLE OF COURT AND CAUSE.]

Findings of Fact and Conclusions of Law.

This cause came on regularly for trial on the 30th day of September, 1918; A. J. Hill, county counsel; Charles S. Burnell, deputy county counsel, and Paul Vallee, deputy county counsel, appearing as counsel for the plaintiff and Messrs. Anderson and Anderson and Nathan Newby appearing as counsel for the defendants Rindge
383 Company, a corporation; May K. Rindge, a widow; Hueneme, Malibu and Southern Railway, a corporation, and Hueneme, Malibu and Port Los Angeles Railway, a corporation. Defendants Samuel K. Rindge, Frederick H. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson, Henry W. Keller, The Pacific Mutual Life Insurance Company, a corporation, and The Pacific Mutual Life Insurance Company of California, a corporation, duly filed herein their
384 respective disclaimers in writing, wherein they, and each of them, respectively, disclaim any right, title or interest in or to the property described in the complaint herein, or any portion thereof.

The defendant sued under the fictitious names of John Doe One, John Doe Two, John Doe Three, John Doe Four, John Doe Five, Mary Doe One, Mary Doe Two, Mary Doe Three, Mary Doe Four and Mary Doe Five, not having

385 been served with summons in said cause, the action was dismissed as to each and all of said defendants so sued under such fictitious names.

Whereupon a jury was regularly impaneled and sworn, and the cause was tried by the court without a jury as to all of the issues therein, except the issues as to the value of the property sought to be condemned and all improvements thereon pertaining to the realty, and the damage, if any, accruing to the lands of the defendants
386 or any of them, not sought to be condemned, by reason of the severance of such lands from the portions sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff the number of miles of fencing which it will be necessary to construct upon the property of the several defendants, respectively, by reason of the taking and use for public highway purposes of the lands sought
387 to be taken from them, the kind of fencing which will be suitable to be constructed on the lands of the said defendants by reason of such taking and use, and the cost of such fencing; and all of said last mentioned issues were submitted to trial before said jury.

A stipulation in writing was entered into by and between the plaintiff and the defendant Hueneme, Malibu and Port Los Angeles Railway, a corporation, that said defendant claims no damage for the taking of, or for damage by the

388 severance, or otherwise, to any of its property involved in the above entitled action, and that the jury might find in accordance with said stipulation.

The respective parties having introduced evidence, both oral and documentary, upon all of the issues submitted for trial by the court, counsel for the respective parties having been heard in argument thereon, and the said issues having been submitted to the court for its decision, the
389 court being fully advised as to the law and the premises, now finds as follows, to-wit:

I.

That all of the allegations contained in paragraph I of the complaint herein as amended, are true.

II.

That all of the allegations contained in paragraph II of said complaint herein are true.

390 III.

That it is necessary for highway purposes, and the public interest, convenience and necessity require, the acquisition of an easement in and over the properties particularly described in paragraph II of the said complaint for the construction, establishment and maintenance of a public highway, as prayed in said complaint, and that the use to which the property sought to be taken is to be applied, is a use authorized by law.

391 IV.

That the lands in and over which it is necessary to acquire said easement are situate in the county of Los Angeles, state of California, and are those pieces and parcels of land more particularly described in the resolution referred to and set forth in paragraph II of the complaint herein.

That it is not true that none of the property described in the complaint herein and sought to
392 be condemned, has heretofore been appropriated to any public use, but that it is true that certain portions thereof have been deeded and dedicated, to the defendants Hueneme, Malibu and Port Los Angeles Railway, a corporation, and Hueneme, Malibu and Southern Railway, a corporation, respectively, as and for easements for rights of way for steam railroads running in and through more than one county in the state
393 of California, and located along, on and across portions of the lands described in paragraph II of the complaint herein, but in this behalf the court finds that the defendant Hueneme, Malibu and Port Los Angeles Railway, a corporation, did not, within two years after filing its original articles of incorporation, or at any other time, begin the construction of its road, or any portion thereof, and that the defendant Hueneme, Malibu and Southern Railway, a corporation, did not, within one year after beginning the

394 construction of its road, or ever, put in full, or in any operation, at least five miles, or any other portion of its road, nor have said corporations, or either of them, ever operated any railroad or railroads by the running thereover of any passenger, mixed or other trains for the carriage of the public, or baggage or freight, or for any other public purpose whatsoever.

The court further finds that the public use to which said property is to be applied is a more
395 necessary public use than that to which it has already, or heretofore been appropriated; and that the proposed public improvement is located, by the taking of said lands, in the manner which will be most compatible with the greatest public good and the least private injury.

V.

That all of the allegations contained in paragraph V of the complaint herein are true, but
396 that it is not true that all of the persons whose names are set forth in the title of this action are owners or claimants of the property sought to be condemned herein, or of any part or portion thereof, and in this behalf the court finds that the only persons whose names are set forth in the title of this action who are owners or claimants of the property sought to be condemned herein, or of any part of portion thereof, are the defendants Rindge Company, a corporation; May K. Rindge, a widow; Hueneme, Mal-

ibu and Port Los Angeles Railway, a corporation, and Hueneme, Malibu and Southern Railway, a corporation, and that said defendants are all of the owners of, or claimants to, said property, or any portion thereof.

VI.

That all of the allegations contained in paragraph VI of the complaint herein are true, except that it is not true that the defendants Henry W. Keller, The Pacific Mutual Life Insurance Company, a corporation; The Pacific Mutual Life Insurance Company of California, a corporation; Rhoda Rindge Adamson, Merritt H. Adamson and Samuel K. Rindge have, or that any of them has, any interest whatever, of any kind or character, in or to any part or portion of the land set forth and described in subdivision 1 of paragraph VI of the complaint herein, nor is it true that the defendants Henry W. Keller, Samuel K. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson and May K. Rindge (other than as a stockholder in the defendant Rindge Company) have, or that either of said defendants has, any interest whatever, of any kind or character, in or to any part or portion of the land set forth and described in subdivision 2 of paragraph VI of said complaint.

VII.

That all of the allegations contained in paragraph VII of the complaint herein are true.

400 VIII.

That it is not true that the defendants sued by the fictitious names of John Doe One, John Doe Two, John Doe Three, John Doe Four, John Doe Five, Mary Doe One, Mary Doe Two, Mary Doe Three, Mary Doe Four and Mary Doe Five, have or claim, or that any of said defendants has, or claims, any interest in, or lien upon the lands described in paragraph II of the complaint herein, or in any part, portion
401 or parcel thereof.

IX.

That all of the allegations contained in paragraph IX of the complaint herein are true.

X.

That it is not true that there has been no consideration or determination of the board of supervisors of the county of Los Angeles of any of the matters or things alleged in said com-
402 plaint, and particularly of the matters or things alleged in paragraph II of said complaint, nor is it true that the resolution referred to in paragraph II of said complaint was arbitrarily adopted by said board of supervisors, without any consideration of the matters or things therein contained, or without the exercise of any discretion therein, or well knowing that there was no room for the exercise of any discretion therein, or that it was arbitrarily adopted at all, nor is it true that said resolution was

adopted by said board of supervisors knowing full well, or otherwise, that all, or that any of the property proposed to be taken for a public road and highway, and to be condemned, as in said resolution set forth and as in the complaint alleged, was not, and could not be necessary for any public use of any kind or character whatever, and cannot, under any circumstances, afford any accommodation of any kind or character to the traveling public, or any part or portion thereof, and that the taking of same for said highway purposes would be without due process of law or in violation of the provisions of the fourteenth amendment to the Constitution of the United States, or that the taking of said property under said resolution for public highway or other purposes, would be void, or would be a denial to the defendants, or to any or either of them, of the equal protection of the laws under the Constitution of the United States, and would contravene the fourteenth, or any amendment to said Constitution, and in this behalf the court finds that it is true that the property proposed to be taken for a public road and highway, and sought to be condemned herein, is located wholly and solely upon and within the confines of private property, except that the easterly end of the strip of land sought to be taken terminates at, and will be in continuation of, a public highway now, and prior to the com-

406 mencement of this action, existing; and the court further finds that the highway sought to be established and maintained over and upon the land sought to be taken, and for the purpose of which the taking is sought, will afford accommodation to the traveling public.

CONCLUSIONS OF LAW.

As conclusions of law from the foregoing facts, the court finds as follows:

407 I.

That it is necessary for highway purposes, and the public interest, convenience and necessity require, the acquisition of an easement in and over the property particularly described in the amended complaint in paragraph number II thereof, for the construction, establishment and maintenance of a public highway.

II.

That the use to which the property sought to
408 be taken is to be applied, is a use authorized by law.

III.

That the public use to which said property is to be applied is a more necessary use than that to which certain portions of it have already been appropriated.

IV.

That the plaintiff is entitled to an interlocutory judgment adjudging that upon payment to

the respective defendants herein, or into court for their benefit, or the amounts adjudged by the jury herein to be due to them respectively as compensation for the land so sought to be condemned, as damage to the land not sought to be condemned by reason of the severance therefrom of the land sought to be condemned, and for the construction of fencing, that the respective parcels of property, as set forth in said complaint herein, sought to be taken by this action, be condemned to the use of the plaintiff herein for public highway purposes, namely, for the construction, establishment and maintenance thereon and thereover of a public highway, as prayed in said complaint herein.

V.

That the several defendants have and recover of and from the plaintiff their respective costs.

Let judgment be entered accordingly.

Dated this 30th day of January, 1919.

PAUL J. MCCORMICK,
Judge of the Superior Court.

Endorsed: Received copy of the within findings this 24 day of January, 1919. Anderson & Anderson, Nathan Newby, attorneys for certain defendants.

Filed Jan. 30, 1919. H. J. Lelande, clerk; by E. C. Polsue, deputy.

412 [TITLE OF COURT AND CAUSE.]

Interlocutory Judgment in Condemnation.

The above entitled cause came on regularly for trial before the court without a jury as to all of the issues except the issues as to the value of the property sought to be condemned and all improvements thereon pertaining to the realty, the damage, if any, to accrue to the lands of the defendants, or any of them not sought to be
413 condemned by reason of the severance of such lands from the portion sought to be condemned, and the construction of the improvement in the manner proposed by plaintiff, the number of miles of fencing which it will be necessary to construct upon the property of the defendants, respectively, by reason of such taking and use, and the cost of such fencing, and all of said last mentioned issues were submitted to trial before
414 a jury regularly impaneled and sworn.

And the court, having found upon all of the issues so submitted to it, and having made its findings of fact and conclusions of law upon said issues, and the issue last above enumerated having been submitted to such trial by a jury and evidence both oral and documentary having been introduced by the respective parties and the cause having been argued by counsel for said parties, and the court having given its instructions in writing, the jury retired to con-

415 sider the same and their verdict, and subsequently returned into court and being called, answered to their names and rendered their verdict upon said issues as follows:

1. What at the date of the trial, September 30th, 1918, was the actual market value of the land sought to be taken from defendant May K. Rindge?

Answer. (Forty foot strip $2324.70

(

416 (Additional parcels $ 228.57

Total $2553.27

2. What, at said date, was the actual market value of the improvements pertaining to the realty on the land sought to be taken from defendant May K. Rindge?

Answer. $153.00

3. Will the remaining portion of defendant May K. Rindge's land, not sought to be taken, be damaged by reason of the severance there-
417 from of the part which is sought to be taken?

Answer. Yes.

4. If your answer to the last interrogatory was in the affirmative, what do you find the amount of such severance damage to be?

Answer. $1162.35

5. How many miles of fencing will it be necessary to construct on the property of defendant May K. Rindge by reason of the taking and use for public highway purposes of the land

418 sought to be taken from defendant May K. Rindge? This question must be answered in the light of the concession of the plaintiff as to the necessity of a fence which I have quoted in the instructions given.

Answer. Six and 6/10 miles.

6. What kind of fencing will be suitable to be constructed on the land of defendant May K. Rindge by reason of such taking and use of her land sought to be taken?

419 Answer. Thirty six inch woven wire with two barbed wires above with suitable posts.

7. What will be the cost of such fencing on the land of defendant May K. Rindge?

Answer. $550.00 per mile, or total—$3630.00

8. What, at the date of the trial, September 30th, 1918, was the actual market value of the land sought to be taken from defendant Rindge Company?

420 Answer. (Forty foot strip $6456.10
(Additional parcels $1278.77
Total $7734.87

9. What, at said date, was the actual market value of the improvements pertaining to the realty on the land sought to be taken from defendant Rindge Company?

Answer. $1234.50

10. Will the remaining portion of defendant Rindge Company's land, not sought to be taken,

421 be damaged by reason of the severance therefrom of the part which is sought to be taken?

Answer. Yes.

11. If your answer to the last interrogatory was in the affirmative, what do you find the amount of such severance damage to be?

Answer. $2696.00

12. How many miles of fencing will it be necessary to construct on the property of defendant Rindge Company by reason of the tak-
422 ing and use for public highway purposes of the land sought to be taken from defendant Rindge Company?

Answer 29 miles.

13. What kind of fencing will be suitable to be constructed on the land of defendant Rindge Company by reason of such taking and use of its land sought to be taken?

Answer. Thirty six inch woven wire with
423 two barbed wires above, with suitable posts.

14. What will be the cost of such fencing on the land of defendant Rindge Company?

Answer. $650.00 per mile—$18,850.00

15. What, at the date of the trial, September 30th, 1918, was the actual market value of the land sought to be taken from defendant Hueneme, Malibu and Southern Railroad Company?

Answer. (Forty foot strip $59.06
(
(Additional parcels $ 7.69
Total $66.75

424 16. What, at said date, was the actual market value of the improvements pertaining to the realty on the land sought to be taken from defendant Hueneme, Malibu and Southern Railroad Company?

Answer. $ 00.00

17. What, at said date, was the actual market value of the land sought to be taken from the defendant Hueneme, Malibu and Port Los An-
425 geles Railroad Company?

Answer. $ 00.00

And it appearing to the court that a stipulation has heretofore been entered into by and between the plaintiff and the defendant Hueneme, Malibu and Port Los Angles Railway, a corporation, that said defendant claims no damage for the taking of, or for damage by severance or otherwise, to any of its property involved in the above entitled action, and that the jury in the above
426 entitled action may find in accordance with this stipulation; and it further appearing to the court that a stipulation has heretofore been entered into by and between the plaintiff and all of the defendants appearing and answering herein, which stipulation provides as follows:

"First: That the judgment in the above entitled cause need not be entered within twenty-four (24) hours after the rendition of the verdict, but that such judgment may be entered upon or after the filing of the findings of fact

and conclusions of law by the court in the same manner as in cases tried by the court without a jury;

"Second: That the memorandum of costs and disbursements need not be served or filed within five (5) days after the verdict, but that the same may be served and filed within five (5) days after notice that the findings of fact and conclusions of law made by the court have been filed."

Now, therefore, by reason of the law and the premises and the findings and conclusions of the court, and the said verdict, it is hereby ordered, adjudged and decreed, that upon payment by plaintiff County of Los Angeles to the defendants Rindge Company, a corporation, May K. Rindge and Hueneme, Malibu and Southern Railway, a corporation, or upon deposit in court by said plaintiff for said defendants, respectively, of the moneys assessed in said verdict as the values of the parcels of land taken by plaintiff from the said defendants, respectively, and hereinafter described, and for the damages assessed as accruing to the remainder of the lands of the defendants, or any of them by reason of their severance from the parts taken, and for the cost of constructing fencing upon the lands of the respective defendants, amounting in the aggregate to be paid to the defendant Rindge Company, a corporation, to the sum of

430 $30,515.37 and costs; and in the aggregate to be paid to the defendant May K. Rindge to the sum of $7,498.62 and costs; and in the aggregate to be paid to the defendant Hueneme, Malibu and Southern Railway, a corporation, to the sum of $66.75 and costs; within thirty days after the entry of this judgment, according to law, the plaintiff take the lands hereinafter described for the purposes alleged in the plaintiff's said complaint herein, and that final judgment
431 for the said property for the public use in the manner proposed by the plaintiff be made and entered according to the law.

It is further ordered, adjudged and decreed that the defendants have and recover from the plaintiff their costs herein, taxed as follows:

Costs of defendant Rindge Company, a corporation, $2,397.38

Costs of defendant May K. Rindge; $.....

432 Costs of defendant Hueneme, Malibu and Southern Railway, a corporation, $.....

The following is a description of the lands condemned in this action, and herein referred to:

Lands of defendant May K. Rindge: All that real property situated in the county of Los Angeles, state of California, and bounded and more particularly described as follows, to-wit:

(Description.)

433 Reference is hereby made to county surveyor's map No. 8070 on which the location of the above described strip of land is accurately shown, said map being on file in the office of the surveyor of Los Angeles county.

Also the following described parcels of land, being in division 1 of said Malibu road, as shown on said county surveyor's map No. 8070 on file in the office of the surveyor of Los Angeles county.

434

Parcel No. 1.
(Description.)

Parcel No. 2.
(Description.)

Parcel No. 3.
(Description.)

Parcel No. 4.
(Description.)

Parcel No. 5.
435 (Description.)

Parcel No. 6.
(Description.)

Parcel No. 7.
(Description.)

Parced No. 8.
(Description.)

Parcel No. 9.
(Description.)

Parcel No. 10.
(Description.)

436 Parcel No. 11.
(Description.)

Parcel No. 12.
(Description.)

Parcel No. 13.
(Description.)

Parcel No. 14.
(Description.)

Parcel No. 15.
437 (Description.)

Parcel No. 16.
(Description.)

Parcel No. 17.
(Description.)

Parcel No. 18.
(Description.)

Parcel No. 19.
(Description.)

438 Parcel No. 20.
(Description.)

Parcel No. 20-A.
(Description.)

Also the following described parcels of land, being in division 1 of said Malibu Road as shown on said county surveyor's map No. 8070 on file in the office of surveyor of Los Angeles county.

Parcel No. 21.
(Description.)

439 Parcel No. 21-A.
(Description.)

Parcel No. 22.
(Description.)

Parcel No. 23.
(Description.)

Parcel No. 24.
(Description.)

Parcel No. 25.
(Description.)

440 Parcel No. 26.
(Description.)

Parcel No. 27.
(Description.)

Parcel No. 28.
(Description.)

Parcel No. 29.
(Description.)

Parcel No. 30.
441 (Description.)

Parcel No. 31.
(Description.)

Parcel No. 32.
(Description.)

Parcel No. 33.
(Description.)

Parcel No. 34.
(Description.)

Parcel No. 35.
(Description.)

442 Also the following described parcels of land, being in division 1 and division 2, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 36.
(Description.)

Parcel No. 37.
(Description.)

443 Also the following described parcels of land, being in division 2, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 38.
(Description.)

Parcel No. 39.
(Description.)

Parcel No. 40.
(Description.)

444 Parcel No. 41.
(Description.)

Parcel No. 42.
(Description.)

Parcel No. 43.
(Description.)

Parcel No. 44.
(Description.)

Parcel No. 45.
(Description.)

Parcel No. 46.
(Description.)

445 Also the following described parcels of land, being in division 3, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 47.
(Description.)

Parcel No. 48.
(Description.)

Parcel No. 49.
(Description.)

446

Parcel No. 50.
(Description.)

Parcel No. 51.
(Description.)

Parcel No. 52.
(Description.)

Parcel No. 53.
(Description.)

Parcel No. 54.
447 (Description.)

Parcel No. 55.
(Description.)

Parcel No. 56.
(Description.)

Parcel No. 57.
(Description.)

Parcel No. 58.
(Description.)

Parcel No. 59.
(Description.)

448 Parcel No. 60.
(Description.)

Parcel No. 61.
(Description.)

Parcel No. 62.
(Description.)

Parcel No. 63.
(Description.)

Parcel No. 64.
(Description.)

449 Parcel No. 65.
(Description.)

Parcel No. 66.
(Description.)

Parcel No. 67.
(Description.)

Also the following described parcels of land, being in division 4, Malibu Road, as shown on county surveyor's map No. 8070, on file in the
450 office of the surveyor of Los Angeles county.

Parcel No. 68.
(Description.)

Parcel No. 69.
(Description.)

Parcel No. 70.
(Description.)

Parcel No. 71.
(Description.)

Parcel No. 72.
(Description.)

451 Parcel No. 73.
(Description.)

Parcel No. 74.
(Description.)

Parcel No. 75.
(Description.)

Parcel No. 76.
(Description.)

Parcel No. 77.
(Description.)

452 Parcel No. 78.
(Description.)

Also all the following described parcels of land, being in division 5, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 79.
(Description.)

Parcel No. 80.
453 (Description.)

Parcel No. 81.
(Description.)

Parcel No. 82.
(Description.)

Parcel No. 83.
(Description.)

Parcel No. 84.
(Description.)

ParcelNo. 85.
(Description.)

454 Parcel No. 86.
(Description.)

Parcel No. 87.
(Description.)

Parcel No. 88.
(Description.)

Parcel No. 89.
(Description.)

Parcel No. 90.
(Description.)

455 Parcel No. 91.
(Description.)

Parcel No. 92.
(Description.)

Also all the following described parcels of land, being in division 6, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

456 Parcel No. 93.
(Description.)

Parcel No. 94.
(Description.)

Parcel No. 95.
(Description.)

Also all the following described parcels of land, being in division 7, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

457 Parcel No. 96.
(Description.)

Parcel No. 97.
(Description.)

Parcel No. 98.
(Description.)

Parcel No. 98a.
(Description.)

Parcel No. 99.
(Description.)

458 Parcel No. 100.
(Description.)

Parcel No. 101.
(Description.)

Parcel No. 102.
(Description.)

Parcel No. 103.
(Description.)

Parcel No. 104.
(Description.)

459 Parcel No. 105.
(Description.)

Parcel No. 106.
(Description.)

Parcel No. 107.
(Description.)

Parcel No. 108.
(Description.)

Parcel No. 109.
(Description.)

460 Parcel No. 110.
(Description.)

Parcel No. 111.
(Description.)

Parcel No. 112.
(Description.)

Parcel No. 113.
(Description.)

Parcel No. 114.
(Description.)

461 Parcel No. 115.
(Description.)

Parcel No. 116.
(Description.)

Parcel No. 117.
(Description.)

Parcel No. 118.
(Description.)

Parcel No. 119.
(Description.)

462 Parcel No. 120.
(Description.)

Parcel No. 121.
(Description.)

Parcel No. 122.
(Description.)

Parcel No. 123.
(Description.)

Parcel No. 124.
(Description.)

463 Parcel No. 125.
(Description.)

Parcel No. 126.
(Description.)

Parcel No. 127.
(Description.)

Parcel No. 128.
(Description.)

Parcel No. 129.
(Description.)

464 Parcel No. 130.
(Description.)

Parcel No. 131.
(Description.)

Parcel No. 132.
(Description.)

Parcel No. 133.
(Description.)

Parcel No. 134.
465 (Description.)

Parcel Uo. 135.
(Description.)

Parcel No. 136.
(Description.)

Also all the following described parcels of land, being in division 8, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 137.
(Description.)

466 Parcel No. 138.
(Description.)

Parcel No. 139.
(Description.)

Parcel No. 140.
(Description.)

Parcel No. 141.
(Description.)

Parcel No. 142.
(Description.)

467 Parcel No. 143.
(Description.)

Parcel No. 144.
(Description.)

Parcel No. 145.
(Description.)

Parcel No. 146.
(Description.)

Further reference is hereby made to said
468 county surveyor's map No. 8070 on which the location of all parcels of land herein described is accurately shown.

Lands of defendant Hueneme, Malibu and Southern Railway, a corporation:

All those portions of the right of way granted to said defendant by deed recorded February 2, 1916, in the office of the county recorder of Los Angeles county in book 6216 of deeds, at page 92 thereof, bounded and more particularly described as follows, to-wit:

469 Those portions of that certain strip of land, sixty feet in width, deeded to the Hueneme, Malibu and Southern Railway by deed recorded in book 6216, page 92 *et seq.* of deeds, records of Los Angeles county, which lie easterly of the westerly line of that certain parcel of land deeded to May K. Rindge by deed recorded in book 766, page 221 of deeds, records of said county, and are bounded and described as follows:

470 First: Beginning at the intersection of the southerly line of the aforesaid sixty foot strip of land deeded to the Hueneme, Malibu and Southern Railway, with the easterly line of Rancho Topanga Malibu Sequit, as shown on map recorded in book 1, pages 414 *et seq.* of patents, records of said county; thence westerly, along the southerly line of said sixty foot strip of land, to an angle point in the northerly line
471 of that certain forty foot strip of land, lying twenty feet on each side of the located center line of the Malibu road, as shown on county surveyor's map No. 8070 on file in the office of the surveyor of Los Angeles county, said angle point being opposite station 3+25.65, in division No. 1, of said located center line; thence easterly, along the northerly line of said forty foot strip of land, to the southwest corner of parcel No. 1 as shown on said county surveyor's map No. 8070; thence northerly, easterly, northerly and

472 easterly along the various courses of the boundary of said parcel No. 1 to the easterly line of said Rancho Topanga Malibu Sequit; thence southeasterly along said rancho line, to the point of beginning.

Second: Beginning at an angle point in the northerly line of that certain forty foot strip of land, lying twenty feet on each side of the located center line of the Malibu road, as shown
473 on the aforesaid county surveyor's map No. 8070, said angle point being opposite station 116+12.18, in division No. 1, of said located center line, said point of beginning also being in the southerly line of the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway; thence westerly, along the southerly line of said sixty foot strip of land, to the southerly line of the aforesaid forty foot strip of land; thence westerly, along the
474 southerly line of said forty foot strip of land, to the northeast corner of parcel No. 5, as shown on the aforesaid county surveyor's map No. 8070; thence southerly and westerly, along the easterly and southerly lines of said parcel No. 5, to the northerly line of the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway; thence easterly, along the northerly line of said sixty foot strip of land, to the northerly line of the aforesaid forty foot strip of land; thence easterly along

475 the northerly line of said forty foot strip of land, to the point of beginning.

Third: Beginning at the northeast corner of parcel No. 10, as shown on the aforesaid county surveyor's map No. 8070, said point of beginning being in the southerly line of that certain forty foot strip of land, lying twenty feet on each side of the located center line of Malibu road, as shown on said map; thence easterly
476 along the southerly line of said forty foot strip of land, to the northerly line of the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway; thence westerly, along the northerly line of said sixty foot strip of land, to the southerly line of the aforesaid parcel No. 10; thence easterly, northerly, easterly and northerly, along the various courses of the boundary of said parcel No. 10, to the point of beginning.

477 Those portions of that certain strip of land, sixty feet in width, deeded to the Hueneme, Malibu and Southern Railway by deed recorded in book 6216, page 92 *et seq.* of deeds, records of Los Angeles county; which lie westerly of the westerly line of that certain parcel of land deeded to May K. Rindge, by deed recorded in book 766, page 221 of deeds, records of said county, and are bounded and described as follows:

First: All of parcel No. 87 as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Second: All of parcel No. 89 as shown on the aforesaid county surveyors' map No. 8070.

Third: That portion of parcel No. 90 as shown on the aforesaid county surveyor's map No. 8070, which lies within the aforesaid sixty foot strip of land deeded to the Hueneme, Malibu and Southern Railway.

Fourth: Beginning at a point in the southerly line of that certain forty foot strip of land, lying twenty feet on each side of the located center line of the Malibu road as shown on the aforesaid county surveyor's map No. 8070, said point of beginning being opposite station 388+61.90, in division No. 6, of said located center line; thence westerly, along the southerly line of said forty foot strip of land, to the northerly line of the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway; thence easterly along the northerly line of said sixty foot strip of land, to the southerly line of the aforesaid forty foot strip of land; thence westerly along the southerly line of said forty foot strip of land, to the point of beginning.

Fifth: That portion of parcel No. 97 as shown on the aforesaid county surveyor's map No. 8070, which lies within the aforesaid sixty

481 foot strip of land, deeded to the Hueneme, Malibu and Southern Railway.

Sixth: That portion of parcel No. 142 as shown on the aforesaid county surveyor's map No. 8070, which lies within the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway.

Seventh: All of parcel No. 144 as shown on the aforesaid county surveyor's map No. 8070.

Done in open court this 5th day of February,
482 1919.

PAUL J. McCORMICK,
Judge of the Superior Court.

Endorsed: Filed Feb. 5, 1919. H. J. Lelande, clerk; by E. A. Wickersham, deputy.

Docketed Feb. 11, 1919; entered Feb. 11, 1919; book 431, page 152; by H. Moore, deputy.

[TITLE OF COURT AND CAUSE.]

483

Clerk's Certificate to Judgment Roll.

I, H. J. Lelande, county clerk of the county of Los Angeles, state of California, and *ex-officio* clerk of the Superior Court in and for said county, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled action, and recorded in judgment book 431 of said court, at page 152. And I further certify that the foregoing papers, hereto an-

484 nexed, constitute the judgment roll in said action.

Witness my hand and the seal of said Superior Court this Feb. 11, 1919.

(Seal) H. J. LELANDE, *Clerk*.

By W. B. HITCHCOCK, *Deputy*.

Judgment roll filed and entered Feb. 11, 1919, in book 431, page 152. H. J. Lelande, clerk; by W. B. Hitchcock, deputy.

485

[TITLE OF COURT AND CAUSE.]

Final Order of Condemnation.

It appearing to the satisfaction of the court that the plaintiff in the above entitled action has deposited with H. J. Lelande, county clerk of Los Angeles county and *ex-officio* clerk of the Superior Court of said county, for the defendants herein, as required by that certain interlocu-

486 tory judgment of condemnation made and filed in the above entitled cause on the 5th day of February, 1919, and recorded in book 431 of judgments, page 152, records of the clerk of the above entitled court, as follows:

The sum of $30,515.37 and costs in the sum of $2,381.38 for the defendant Rindge Company, a corporation;

The sum of $7,498.62 for the defendant May K. Rindge; and

487 The sum of $66.75 for the defendant Hueneme, Malibu & Southern Railway Company, a corporation; and

The court having, on the 3rd day of April, 1919, made and filed with the clerk of the court an order in words following, to-wit:

"Defendants' motion for a new trial herein is denied except as to the issue of suitable fences, which issue was under a stipulation and conces-
488 sion submitted to the jury herein. Under this concession it was the duty of the jury to have found that no less than 31.5 miles of fencing was necessary on the land and property of defendant Rindge Company, a corporation, and inasmuch as the jury failed to so find, a new trial on the issue of necessary suitable fences will be ordered unless within two (2) days from this date the plaintiffs herein file with the clerk of this court consent in writing to the allow-
489 ance of 31 5/10 miles of fencing at the rate and of the kind found by the jury herein. If such written consent is filed as aforesaid, the motion of defendant for a new trial is denied *in toto*.

Apr. 3, 1919.

(Signed) PAUL J. MCCORMICK, J."

And

It further appearing to the satisfaction of the court that on the 5th day of April, 1919, the plaintiff County of Los Angeles filed a stipula-

490 tion and election with the clerk of the court in words following, to-wit:

"Plaintiff County of Los Angeles hereby stipulates, agrees and consents to the allowance of 31.5 miles of 36 inch woven wire fence, with two barb wires above, and suitable posts, at the rate of $650 per mile, as necessary on the land and property of the defendant Rindge Company, a corporation, by reason of the taking and use for public highway purposes of the land sought to
491 be taken from the defendant Rindge Company, and hereby stipulates and agrees to deposit with the clerk of the court for the defendant Rindge Company in addition to the amounts heretofore deposited, the sum of $1625.

Plaintiff County of Los Angeles hereby stipulates, agrees and elects to build and construct 6.6 miles of 36 inch woven wire fence, with two barb wires above, and suitable posts, on the
492 property of the defendant May K. Rindge, as specified in the verdict of the jury in the above entitled action, which are the fences for which damages have been assessed in said action, in favor of defendant May K. Rindge; and

Plaintiff County of Los Angeles hereby stipulates, agrees and elects to build and construct 31.5 miles of 36 inch woven wire fence, with two barb wires above, and suitable posts, on the property of the defendant Rindge Company, a corporation, as specified by the verdict of the

493 jury and the order denying the motion for a new trial in the above entitled action, which are the fences for which damages have been assessed in said action, in favor of defendant Rindge Company.

Dated Los Angeles, California, Apr. 4, 1919.

A. J. HILL,
County Counsel;
C. S. BURNELL,
Deputy County Counsel;
494 PAUL VALLEE,
Deputy County Counsel,
Attorneys for Plaintiff.

It is hereby ordered that the plaintiff have ten days from the date hereof in which to deposit with the clerk of the court the sum of $1625, being the amount necessary to build 2.5 miles of fencing under the verdict of the jury in the above entitled action, which is the number of
495 miles consented by the plaintiff to be allowed in addition to the number of miles found necessary by the jury.

Dated Los Angeles, California, April 4th, 1919.

PAUL J. MCCORMICK,
Judge."

And it further appearing to the court that on the 14th day of April, 1919, plaintiff County of Los Angeles, in compliance with said order made

496 and filed on the 3rd day of April, 1919, and in compliance with said stipulation and election filed on the 5th day of April, 1919, did deposit with H. J. Lelande, county clerk of Los Angeles county and *ex-officio* clerk of the Superior Court of said county, for the defendant Rindge Company the further sum of $1625;

Now, therefore, on motion of A. J. Hill, county counsel; Charles S. Burnell, deputy
497 county counsel, and Paul Vallee, deputy county counsel, attorneys for plaintiff, it is ordered, adjudged and decreed that the parcels of land hereinafter described be, and the same are hereby condemned for public highway purposes.

Said parcels of land so condemned for public highway purposes are more particularly described as follows:

Lands of defendant May K. Rindge: All that real property situated in the county of Los
498 Angeles, state of California, and bounded and more particularly described as follows, to-wit:

(Description.)

Reference is hereby made to county surveyor's map No. 8070 on which the location of the above described strip of land is accurately shown, said map being on file in the office of the surveyor of Los Angeles county.

Also the following described parcels of land, being in division 1 of said Malibu road, as

499 shown on said county surveyor's map No. 8070 on file in the office of the surveyor of Los Angeles county.

Parcel No. 1.
(Description.)

Parcel No. 2.
(Description.)

Parcel No. 3.
(Description.)

500 Parcel No. 4.
(Description.)

Parcel No. 5.
(Description.)

Parcel No. 6.
(Description.)

Parcel No. 7.
(Description.)

Parcel No. 8.
(Description.)

501 Parcel No. 9.
(Description.)

Parcel No. 10.
(Description.)

Parcel No. 11.
(Description.)

Parcel No. 12.
(Description.)

Parcel No. 13.
(Description.)

502 Parcel No. 14.
(Description.)

Parcel No. 15.
(Description.)

Parcel No. 16.
(Description.)

Parcel No. 17.
(Description.)

Parcel No. 18.
(Description.)

503 Parcel No. 19.
(Description.)

Parcel No. 20.
(Description.)

Parcel No. 20-A.
(Description.)

Also the following described parcels of land, being in division 1 of said Malibu Road as shown on said county surveyor's map No. 8070
504 on file in the office of surveyor of Los Angeles county.

Parcel No. 21.
(Description.)

Parcel No. 21-A.
(Description.)

Parcel No. 22.
(Description.)

Parcel No. 23.
(Description.)

505 Parcel No. 24.
(Description.)

Parcel No. 25.
(Description.)

Parcel No. 26.
(Description.)

Parcel No. 27.
(Description.)

Parcel No. 28.
(Description.)

506 Parcel No. 29.
(Description.)

Parcel No. 30.
(Description.)

Parcel No. 31.
(Description.)

Parcel No. 32.
(Description.)

Parcel No. 33.
507 (Description.)

Parcel No. 34.
(Description.)

Parcel No. 35.
(Description.)

Also the following described parcels of land, being in division 1 and division 2, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

508 Parcel No. 36.
(Description.)
Parcel No. 37.)
(Description.)

Also the following described parcels of land, being in division 2, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 38.
(Description.)

509 Parcel No. 39.
(Description.)

Parcel No. 40.
(Description.)

Parcel No. 41.
(Description.)

Parcel No. 42.
(Description.)

Parcel No. 43.
510 (Description.)

Parcel No. 44.
(Description.)

Parcel No. 45.
(Description.)

Parcel No. 46.
(Description.)

Also the following described parcels of land, being in division 3, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

511 Parcel No. 47.
(Description.)

Parcel No. 48.
(Description.)

Parcel No. 49.
(Description.)

Parcel No. 50.
(Description.)

Parcel No. 51.
(Description.)

512 Parcel No. 52.
(Description.)

Parcel No. 53.
(Description.)

Parcel No. 54.
(Description.)

Parcel No. 55.
(Description.)

Parcel No. 56.
513 (Description.)

Parcel No. 57.
(Description.)

Parcel No. 58.
(Description.)

Parcel No. 59.
(Description.)

Parcel No. 60.
(Description.)

Parcel No. 61.
(Description.)

514 Parcel No. 62.
(Description.)

Parcel No. 63.
(Description.)

Parcel No. 64.
(Description.)

Parcel No. 65.
(Description.)

Parcel No. 66.
(Description.)

515 Parcel No. 67.
(Description.)

Also the following described parcels of land, being in division 4, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 68.
(Description.)

Parcel No. 69.
516 (Description.)

Parcel No. 70.
(Description.)

Parcel No. 71.
(Description.)

Parcel No. 72.
(Description.)

Parcel No. 73.
(Description.)

Parcel No. 74.
(Description.)

517 Parcel No. 75.
(Description.)

Parcel No. 76.
(Description.)

Parcel No. 77.
(Description.)

Parcel No. 78.
(Description.)

Also all the following described parcels of land, being in division 5, Malibu Road, as shown
518 on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 79.
(Description.)

Parcel No. 80.
(Description.)

Parcel No. 81.
(Description.)

Parcel No. 82.
519 (Description.)

Parcel No. 83.
(Description.)

Parcel No. 84.
(Description.)

Parcel No. 85.
(Description.)

Parcel No. 86.
(Description.)

Parcel No. 87.
(Description.)

520 Parcel No. 88.
(Description.)

Parcel No. 89.
(Description.)

Parcel No. 90.
(Description.)

Parcel No. 91.
(Description.)

Parcel No. 92.
(Description.)

521 Also all the following described parcels of land, being in division 6, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 93.
(Description.)

Parcel No. 94.
(Description.)

Parcel No. 95.
(Description.)

522 Also all the following described parcels of land, being in division 7, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 96.
(Description.)

Parcel No. 97.
(Description.)

Parcel No. 98.
(Description.)

523 Parcel No. 98a.
(Description.)

Parcel No. 99.
(Description.)

Parcel No. 100.
(Description.)

Parcel No. 101.
(Description.)

Parcel No. 102.
(Description.)

524 Parcel No. 103.
(Description.)

Parcel No. 104.
(Description.)

Parcel No. 105.
(Description.)

Parcel No. 106.
(Description.)

Parcel No. 107.
525 (Description.)

Parcel No. 108.
(Description.)

Parcel No. 109.
(Description.)

Parcel No. 110.
(Description.)

Parcel No. 111.
(Description.)

Parcel No. 112.
(Description.)

526 Parcel No. 113.
(Description.)

Parcel No. 114.
(Description.)

Parcel No. 115.
(Description.)

Parcel No. 116.
(Description.)

Parcel No. 117.
(Description.)

526 Parcel No. 118.
(Description.)

Parcel No. 119.
(Description.)

Parcel No. 120.
(Description.)

Parcel No. 121.
(Description.)

Parcel No. 122.
(Description.)

528 Parcel No. 123.
(Description.)

Parcel No. 124.
(Description.)

Parcel No. 125.
(Description.)

Parcel No. 126.
(Description.)

Parcel No. 127.
(Description.)

529 Parcel No. 128.
(Description.)

Parcel No. 129.
(Description.)

Parcel No. 130.
(Description.)

Parcel No. 131.
(Description.)

Parcel No. 132.
(Description.)

530 Parcel No. 133.
(Description.)

Parcel No. 134.
(Description.)

Parcel No. 135.
(Description.)

Parcel No. 136.
(Description.)

Also all the following described parcels of
531 land, being in division 8, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 137.
(Description.)

Parcel No. 138.
(Description.)

Parcel No. 139.
(Description.)

Parcel No. 140.
(Description.)

532 Parcel No. 141.
(Description.)

Parcel No. 142.
(Description.)

Parcel No. 143.
(Description.)

Parcel No. 144.
(Description.)

Parcel No. 145.
(Description.)

533 Parcel No. 146.
(Description.)

Further reference is hereby made to said county surveyor's map No. 8070 on which the location of all parcels of land herein described is accurately shown.

Lands of defendant Hueneme, Malibu and Southern Railway, a corporation:

All those portions of the right of way granted
534 to said defendant by deed recorded February 2, 1916, in the office of the county recorder of Los Angeles county in book 6216 of deeds, at page 92 thereof, bounded and more particularly described as follows, to-wit:

Those portions of that certain strip of land, sixty feet in width, deeded to the Hueneme, Malibu and Southern Railway by deed recorded in book 6216, page 92 *et seq.* of deeds, records of Los Angeles county, which lie easterly of the westerly line of that certain parcel of land

deeded to May K. Rindge by deed recorded in book 766, page 221 of deeds, records of said county, and are bounded and described as follows:

First: Beginning at the intersection of the southerly line of the aforesaid sixty foot strip of land deeded to the Hueneme, Malibu and Southern Railway, with the easterly line of Rancho Topanga Malibu Sequit, as shown on map recorded in book 1, pages 414 *et seq.* of patents, records of said county; thence westerly, along the southerly line of said sixty foot strip of land, to an angle point in the northerly line of that certain forty foot strip of land, lying twenty feet on each side of the located center line of the Malibu road, as shown on county surveyor's map No. 8070 on file in the office of the surveyor of Los Angeles county, said angle point being opposite station 3+25.65, in division No. 1, of said located center line; thence easterly, along the northerly line of said forty foot strip of land, to the southwest corner of parcel No. 1 as shown on said county surveyor's map No. 8070; thence northerly, easterly, northerly and easterly along the various courses of the boundary of said parcel No. 1 to the easterly line of said Rancho Topanga Malibu Sequit; thence southeasterly along said rancho line, to the point of beginning.

183

Second: Beginning at an angle point in the northerly line of that certain forty foot strip of land, lying twenty feet on each side of the located center line of the Malibu road, as shown on the aforesaid county surveyor's map No. 8070, said angle point being opposite station 116+12.18, in division No. 1, of said located center line, said point of beginning also being in the southerly line of the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway; thence westerly, along the southerly line of said sixty foot strip of land, to the southerly line of the aforesaid forty foot strip of land; thence westerly, along the southerly line of said forty foot strip of land, to the northeast corner of parcel No. 5, as shown on the aforesaid county surveyor's map No. 8070; thence southerly and westerly, along the easterly and southerly lines of said parcel No. 5, to the northerly line of the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway; thence easterly, along the northerly line of said sixty foot strip of land, to the northerly line of the aforesaid forty foot strip of land; thence easterly along the northerly line of said forty foot strip of land, to the point of beginning.

Third: Beginning at the northeast corner of parcel No. 10, as shown on the aforesaid county surveyor's map No. 8070, said point of begin-

541 ning being in the southerly line of that certain forty foot strip of land, lying twenty feet on each side of the located center line of Malibu road, as shown on said map; thence easterly along the southerly line of said forty foot strip of land, to the northerly line of the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway; thence westerly, along the northerly line of said sixty foot strip of land, to the southerly line of the
542 aforesaid parcel No. 10; thence easterly, northerly, easterly and northerly, along the various courses of the boundary of said parcel No. 10, to the point of beginning.

Those portions of that certain strip of land, sixty feet in width, deeded to the Hueneme, Malibu and Southern Railway by deed recorded in book 6216, page 92 *et seq.* of deeds, records of Los Angeles county; which lie westerly of
543 the westerly line of that certain parcel of land deeded to May K. Rindge, by deed recorded in book 766, page 221 of deeds, records of said county, and are bounded and described as follows:

First: All of parcel No. 87 as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Second: All of parcel No. 89 as shown on the aforesaid county surveyor's map No. 8070.

Third: That portion of parcel No. 90 as

shown on the aforesaid county surveyor's map No. 8070, which lies within the aforesaid sixty foot strip of land deeded to the Hueneme, Malibu and Southern Railway.

Fourth: Beginning at a point in the southerly line of that certain forty foot strip of land, lying twenty feet on each side of the located center line of the Malibu road as shown on the aforesaid county surveyor's map No. 8070, said point of beginning being opposite station 388+61.90, in division No. 6, of said located center line; thence westerly, along the southerly line of said forty foot strip of land, to the northerly line of the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway; thence easterly along the northerly line of said sixty foot strip of land, to the southerly line of the aforesaid forty foot strip of land; thence westerly along the southerly line of said forty foot strip of land, to the point of beginning.

Fifth: That portion of parcel No. 97 as shown on the aforesaid county surveyor's map No. 8070, which lies within the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway.

Sixth: That portion of parcel No. 142 as shown on the aforesaid county surveyor's map No. 8070, which lies within the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway.

547 Seventh: All of parcel No. 144 as shown on the aforesaid county surveyor's map No. 8070.

Done in open court this 18th day of April, 1919.

PAUL J. McCORMICK,
Judge of the Superior Court.

Endorsed: Filed Apr. 18, 1919. H. J. Lelande, clerk; by E. C. Polsue, deputy.

Docketed Apr. 29, 1919; entered Apr. 29, 1919; book 471, page 76; by E. Gaffney, deputy
548 clerk.

[TITLE OF COURT AND CAUSE.]

Clerk's Certificate to Judgment Roll.

I, H. J. Lelande, county clerk of the county of Los Angeles, state of California, and *ex-officio* clerk of the Superior Court in and for said county, do hereby certify the foregoing to be a true copy of the judgment entered in the above-
549 entitled action, and recorded in judgment book 471 of said court, at page 76. And I further certify that the foregoing papers, hereto annexed, constitute the judgment roll in said action.

Witness my hand and the seal of said Superior Court this Apr. 29, 1919.

(Seal) H. J. LELANDE, *Clerk.*
By W. B. HITCHCOCK, *Deputy.*

Judgment roll filed and entered Apr. 29, 1919, in book 471, page 76. H. J. Lelande, clerk; by W. B. Hitchcock, deputy.

550 [TITLE OF COURT AND CAUSE.]

Notice of Appeal.

To the Above-Named Plaintiff, and to Its Attorneys, A. J. Hill, County Counsel; Charles S. Burnell, Deputy County Counsel, and Paul Vallee, Deputy County Counsel, and to Hon. H. J. Lelande, County Clerk:

You, and each of you, will please take notice that the defendants, Rindge Company, a corporation; May K. Rindge, Hueneme, Malibu and
551 Southern Railway, a corporation, and Hueneme, Malibu and Port Los Angeles Railway, a corporation, hereby appeal, and each of them hereby appeals, to the Supreme Court of the state of California, from the interlocutory judgment and decree of condemnation heretofore rendered against them, and each of them, in the above-entitled action, and from the whole thereof, and also from the final order and judgment
552 of condemnation signed by the court and filed with the clerk of the court on the 18th day of April, 1919, and from the whole thereof.

Dated April 28th, 1919.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Said Defendants.

Endorsed: Received copy of the within notice this 28 day of April, 1919. A. J. Hill, county counsel; by C. S. Burnell, attorney for plaintiff.

Filed Apr. 28, 1919. H. J. Lelande, clerk; by E. D. Doyle, deputy.

553 B59443.

In the Superior Court

OF THE

State of California,

IN AND FOR THE COUNTY OF LOS ANGELES.

County of Los Angeles,
Plaintiff.

554 *vs.*

Rindge Company, a Corporation, John One, John Two, John Three, Mary One, Mary Two, Mary Three, John Doe Company, and John Doe Corporation,
Defendants.

Complaint. Condemnation.

555 The County of Los Angeles, plaintiff in the above entitled action, by way of complaint against the defendant above named, alleges:

I.

That the plaintiff above named is now, and at all the times hereinafter mentioned has been, a county of the state of California.

That the defendant, Rindge Company, is a corporation organized and existing under and by virtue of the laws of the state of California, with its principal place of business in the city

of Los Angeles, county of Los Angeles, state of California.

II.

That the public interest and necessity require the construction of a public highway over the property hereinafter described, and that for the purpose of constructing a public highway, the acquisition of said property is necessary, viz., that certain parcel of land situate in the county of Los Angeles, and described as being:

(Description.)

That none of the property hereinabove described has heretofore been appropriated to any public use, and said property constitutes all the land sought to be condemned in this action; that said proposed improvement is planned in the manner which will be most compatible with the greatest public good and the least private injury.

III.

That the location, general route and termini of the right of way herein sought and hereinabove described, and all parcels of land sought to be condemned in this action, are correctly delineated and shown upon the map thereof hereto attached, which map is hereby referred to and made a part of this complaint. That said parcel of land constitutes only a part of a larger parcel of land, and such larger parcel of land is

559 also correctly delineated and shown upon said map.

IV.

That the board of supervisors of Los Angeles county, at a regular meeting thereof held on the 3rd day of December, 1917, duly adopted, by four-fifths vote of all members, a resolution declaring that it was the determination of said board, and they found that the public interest
560 and necessity required the construction and completion by said Los Angeles county of a public highway over the property hereinabove described, and that said property was necessary for said public highway purposes; and declaring that said property should be condemned for said public highway purposes; and authorizing the county counsel of said county to institute proceedings in the proper court for the condemnation of said land for public highway purposes,
561 in the name of the said county.

V.

That it is informed and believes, and therefore alleges the fact to be that said Rindge Company, defendant herein, is the owner of the parcel of land herein sought to be condemned, viz., the parcel of land described in paragraph II hereinabove. That said parcel is only a part of a larger parcel of land owned by said defendant, which said larger parcel is described as being all that tract of land in said county

of Los Angeles known by the name of Rancho Topanga-Malibu-Sequit, patented to Matthew Keller by the United States of America on the 29th day of August, 1872, and a patent there for recorded in book 1, page 407, and up to and including page 417 of patents, of the records of said county of Los Angeles, excepting there from the eastern 1856.75 acres, more or less, of said rancho heretofore deeded to May K. Rindge by deed recorded in book 766 of deeds, page 221 and following, records of said county; said larger parcel being one of the parcels of land deeded to said Rindge Company by May K. Rindge, Samuel K. Rindge, Frederick H. Rindge and Rhoda A. Rindge, by deed dated the 20th day of December, 1911, and recorded in book 4819 of deeds, records of said county, at page 217 and following, to which deed reference is hereby made for a further and more particular description, as it appears on pages 224 and 225 of said book 4819 of deeds.

VI.

That the names of all the owners and claimants of the property sought to be condemned in this action, or any part thereof, so far as known to this plaintiff, are set forth in the title hereof.

That the defendants, John One, John Two, John Three, Mary One, Mary Two, Mary Three, John Doe Company and John Doe Corporation,

565 are sued and designated herein by fictitious names, for the reason that their true names are unknown to this plaintiff, and said plaintiff will ask leave to amend this complaint upon ascertaining said true names.

That said defendants have or claim to have some interest or lien upon the lands hereinabove in paragraph II described, or in some part or parcel thereof, but the nature, character and extent of such claim, interest or lien is unknown
566 to this plaintiff.

Wherefore, this plaintiff prays that said defendants be required by answer to set forth the nature and extent of their several estates or interests in the land or any parcel thereof sought to be condemned in this action, and that such several estates and interests may be determined and adjudicated in this action; that the value of each and every such separate estate or interest in said land or any parcel thereof, and the dam-
567 age accruing to the respective owners of such separate estate or interest by reason of the condemnation thereof in the construction of the improvement in the manner proposed by the plaintiff, be ascertained and adjudged; that upon the payment to the said several defendants, or into court for them, of the several amounts so ascertained, the court make and enter a final judgment condemning the land herein to the public use for the public improvement herein

568 described; and for such other and further relief as to the court may seem meet in the premises.

A. J. HILL,
County Counsel, and
EDWARD T. BISHOP,
Deputy County Counsel,
Attorneys for Plaintiff.

State of California, County of Los Angeles—ss.

Edward T. Bishop, being first duly sworn, deposes and says: That the plaintiff, the County
569 of Los Angeles, is a body politic and corporate, a legal subdivision of the state of California, and therefore is unable to verify the foregoing complaint except through its officers; that he is a deputy county counsel of said plaintiff county and an attorney for the plaintiff in the above entitled action, and that as such deputy county counsel he is an officer of said county, and as such verifies this complaint; that he has read
570 the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters stated upon information or belief, and as to those matters he believes it to be true.

EDWARD T. BISHOP.

Subscribed and sworn to before me this 24th day of January, 1918.

H. J. LELANDE, *County Clerk.*
By EMILY W. WUSSOW, *Deputy.*

MAP.

571 Endorsed: Filed Jan. 24, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

[TITLE OF COURT AND CAUSE.]

Amended Answer of Defendant, Rindge Company.

Now comes Rindge Company, one of the defendants in the above-entitled action, and by
572 leave of the court first had and obtained files this, its amended answer to the complaint of plaintiff therein, and says:

I.

That it admits the allegations of paragraph I of said complaint.

II.

That it denies that the public or any interest or necessity requires the construction of a public or any highway or any highway whatsoever
573 over the property described in paragraph II of said complaint, or over any property, or any part of any property, whatever belonging to this defendant, or for the purpose of constructing a public or any highway whatever that the acquisition of said or any part or portion of said property is necessary either as described in paragraph II of said amended complaint, or otherwise, or at all.

574 III.

That it has not sufficient information, knowledge or belief, or either, to enable it to answer the allegations of paragraph IV of said complaint, and, therefore, it denies all and singular, each and every of the said allegations, and the whole thereof.

IV.

That it admits the allegations of paragraph V of said complaint.

575 And as another and further and separate action and defense herein defendant alleges:

That it is informed and believes, and upon its information and belief alleges, that there has been no consideration or determination by the board of supervisors of the county of Los Angeles, state of California, of any of the matters or things alleged in the complaint herein, and particularly of the matters or things alleged in

576 paragraph II and paragraph IV of said complaint, and that the said alleged resolution referred to in paragraph IV of the said complaint was arbitrarily adopted by the said board of supervisors of Los Angeles county without any consideration of the matters or things therein contained, and without the exercise of any discretion therein, and well knowing that there was no room for the exercise of any discretion therein, but that on the contrary knowing full well that the property proposed to be taken for a

577 public road and highway and to be condemned as in said resolution set forth and as in said complaint alleged was not, and could not be, necessary for any public use of any kind or character whatever, and particularly in this that it is located wholly and solely upon and within the confines of private property, and cannot under any circumstances afford any accommodation of any kind or character to the traveling public, or any part or portion thereof, and that,
578 therefore, the taking of the same for any alleged highway purposes would be without due process of law, and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and that the taking of said property described in said resolution or any part or portion thereof for public highway or other purposes would be void, and would be a denial to this defendant of the equal protection of the laws under the Constitution of the United
579 States, and would be in contravention of the Fourteenth Amendment to the said Constitution of the United States.

And for another and further and separate answer and defense this defendant alleges:

I.

That the value of the parcel of land first described in paragraph II of the complaint herein was at the date of the filing of said complaint

and the issuance of the summons herein the sum of $368.00

II.

That the value of the parcel of land described in paragraph II of the complaint as parcel No. 1 was at said date the sum of $156.00.

III.

That the value of the parcel of land described in paragraph II of the complaint as parcel No. 2 was at said date the sum of $284.40.

IV.

That the damage and detriment to the larger parcel of land of which said parcels of land described in paragraph II of the complaint form a part, by reason of the taking of said parcels of land for the purposes alleged in said complaint will not be less than $10,000.00.

Wherefore this defendant prays that plaintiff take nothing, and that it recover its costs of suit; or that, in the event of the condemnation and taking of the parcels of land described in paragraph II of the complaint, that this defendant have and recover of and from the plaintiff the sum of $10,808.40 as the value thereof and as damages for the taking thereof, and its costs of suit.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Said Defendant.

Duly verified.

583 Endorsed: Received copy of the within amended answer this 30 day of Sept., 1918. A. J. Hill, Paul Vallee, Charles S. Burnell, attorney for plaintiff.

Filed Sep. 30, 1918. H. J. Lelande, clerk; by E. C. Polsue, deputy.

[TITLE OF COURT AND CAUSE.]

Verdict. Los Alisos Road Case.

584 1. What, on the 24th day of January, 1918, was the actual market value of the land sought to be taken from defendant Rindge Company?

Answer (Forty foot strip $184.00
(
(Additional parcels $220.00

Total $404.00

2. Will the remaining portion of defendant Rindge Company's land, not sought to be taken, 585 be damaged by reason of the severance therefrom of the part which is sought to be taken?

Answer No

(Yes or No)

3. If your answer to the last interrogatory was in the affirmative, what do you find the amount of such severance damage to be?

Answer $ None

4. How many miles of fencing will it be necessary to construct on the property of de-

586 fendant Rindge Company by reason of the taking and use for public highway purposes of the land sought to be taken from defendant Rindge Company? (This question must be answered in the light of the concession made by plaintiff which I have quoted in the instruction.)

Answer 3.87 miles.

5. What kind of fencing will be suitable to be constructed on the land of defendant Rindge Company by reason of such taking and use of
587 its land sought to be taken?

Answer Thirty-six inch woven wire with two barbed wires above with suitable posts.

6. What will be the cost of such fencing on the land of defendant Rindge Company?

Answer $(675.00) (per mile) $2612.25

7. What, on the 24th day of January, 1918, was the actual market value of the land sought to be taken from defendant Hueneme, Malibu
588 and Port Los Angeles Railroad Company?

Answer $—.0

We, the jury, ascertain and assess the compensation to be paid to the defendants herein in accordance with answers to the foregoing interrogatories.

JAS. A. WILLIAMS,
Foreman.

Endorsed: Filed Dec. 19, 1918. H. J. Lelande, clerk; by E. C. Polsue, deputy.

589 [TITLE OF COURT AND CAUSE.]

Findings of Fact and Conclusions of Law.

This cause came on regularly for trial on September 30, 1918, A. J. Hill, county counsel, Charles S. Burnell, deputy county counsel and Paul Vallee, deputy county counsel, appearing as counsel for the plaintiff and Messrs. Anderson and Anderson, and Nathan Newby appearing as counsel for defendant, Rindge Company,
590 a corporation.

Defendants sued under the fictitious names of John Doe One, John Doe Two, John Doe Three, Mary Doe One, Mary Doe Two, Mary Doe Three, John Doe Company and John Doe Corporation, not having been served with summons in said cause, the action was dismissed as to each and all of said defendants so sued herein.

Whereupon a jury was regularly impaneled and sworn, and the cause was tried by the court
591 without a jury as to all of the issues therein, except the issues as to the value of the property sought to be condemned and all improvements thereon pertaining to the realty, and the damage, if any, accruing to the lands of the defendant not sought to be condemned, by reason of the severance of such lands from the portions sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff, the number of miles of fencing which

592 it will be necessary to construct upon the property of the defendant by reason of the taking and use for public highway purposes of the land sought to be taken, the kind of fencing which will be suitable to be constructed on the lands of said defendant by reason of such taking and use, and the cost of such fencing; and all of said last mentioned issues were submitted to trial before said jury.

593 The respective parties having introduced evidence, both oral and documentarly, upon all of the issues submitted for trial by the court, counsel for the respective parties having been heard in argument thereon, and the said issues having been submitted to the court for its decision, the court being fully advised as to the law and the premises, now finds as follows, to-wit:

I.

That all of the allegations contained in plain-
594 tiff's complaint in paragraphs I, II, III, IV and V thereof, are true.

II.

That all of the allegations contained in paragraph VI of said complaint are true, except that it is not true that the defendants sued by the fictitious names of John Doe One, John Doe Two, John Doe Three, Mary Doe One, Mary Doe Two, Mary Doe Three, John Doe Company and John Doe Corporation have, or that any or either of them has, any interest in, or lien upon

595 the lands described in paragraph II of the complaint herein, or in any part or parcel thereof, and in this behalf the court finds that the sole owner and only person interested in or having any claim or lien upon the said lands is the defendant, Rindge Company, a corporation.

III.

That it is not true that there has been no consideration or determination by the board of supervisors of the county of Los Angeles of
596 any of the matters or things alleged in said complaint and particularly of the matters or things alleged in paragraph IV of said complaint, nor is it true that the resolution referred to in paragraph IV of said complaint was arbitrarily adopted by said board of supervisors, without any consideration of the matters or things therein contained, or without the exercise of any discretion therein, or well knowing
597 that there was no room for the exercise of any discretion therein, or that it was arbitrarily adopted at all, nor is it true that said resolution was adopted by said board of supervisors knowing full well, or otherwise, or at all, that any of the property proposed to be taken for a public road and highway, and to be condemned, as in said resolution set forth and as in complaint alleged, was not, and could not be necessary for any public use of any kind or character whatever, and cannot, under any circumstances, af-

598 ford any accommodation of any kind or character to the traveling public, or any part or portion thereof, and that the taking of same for said highway purposes would be without due process of law or in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, or that the taking of said property under said resolution for public highway or other purposes, would be void, or would be a denial to the defendant, of the equal
599 protection of the laws under the Constitution of the United States, and would contravene the Fourteenth, or any amendment to said Constitution, and in this behalf the court finds; that it is true that the property proposed to be taken for a public road and highway, and sought to be condemned herein, is located wholly and solely upon and within the confines of private property, except that the southerly end of the strip of
600 land sought to be taken terminates at, and will connect with, another strip of land sought to be acquired by the plaintiff in another action, (which other action was tried at the same time as, and with this action, and before the same court and jury) brought for the purpose of condemning said last mentioned strip of land for public highway purposes, and the court further finds that the highway sought to be established and maintained over and upon the land sought in this action to be taken and for the purpose

601 of which the taking is sought, will afford accommodation to the traveling public.

CONCLUSIONS OF LAW.

As conclusions of law from the foregoing facts, the court finds as follows:

I.

That it is necessary for highway purposes, and the public interest, convenience and necessity require, the acquisition of an easement in
602 and over the property particularly described in the amended complaint in paragraph number II thereof, for the construction, establishment and maintenance of a public highway.

II.

That the use to which the property sought to be taken is to be applied, is a use authorized by law.

III.

That the plaintiff is entitled to an interlocu-
603 tory judgment adjudging that upon payment to the defendant, Rindge Company, a corporation, or into court for its benefit, of the amount adjudged by the jury herein to be due to it as compensation for the land so sought to be condemned, as damage to the land not sought to be condemned by reason of the severance therefrom of the land sought to be condemned, and for the construction of fencing, that the respective parcels of property, as set forth in said complaint herein, sought to be taken by this

604 action, be condemned to the use of the plaintiff herein for public highway purposes; namely, for the construction, establishment and maintenance thereon and thereover of a public highway, as prayed in said complaint herein.

IV.

That the said defendant have and recover of and from the plaintiff, its costs.

Let judgment be entered accordingly.

Dated this 30th day of January, 1919.

605

PAUL J. McCORMICK,
Judge of the Superior Court.

Endorsed: Received copy of the within findings this 24 day of Jany., 1919. Anderson & Anderson, Nathan Newby, attorneys for certain defendants.

Filed Jan. 30, 1919. H. J. Lelande, clerk; by E. C. Polsue, deputy.

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606 [TITLE OF COURT AND CAUSE.]

Interlocutory Judgment in Condemnation.

The above entitled cause came on regularly for trial before the court without a jury as to all of the issues except the issues as to the value of the property sought to be condemned and all improvements thereon pertaining to the realty, the damage, if any, to accrue to the lands of the defendant, not sought to be condemned, by reason of the severance of such lands from the

607 portion sought to be condemned, and the construction of the improvement in the manner proposed by plaintiff, the number of miles of fencing which it will be necessary to construct upon the property of the defendant by reason of such taking and use, and the cost of such fencing, and all of said last mentioned issues were submitted to trial before a jury regularly impaneled and sworn.

608 And the court, having found upon all of the issues so submitted to it, and having made its findings of fact and conclusions of law upon said issues, and the issues last above enumerated having been submitted to such trial by a jury, and evidence both oral and documentary having been introduced by the respective parties and the cause having been argued by counsel for said parties, and the court having given its instructions in writing, the jury retired to consider the

609 same and their verdict, and subsequently returned into court and being called, answered to their names and rendered their verdict upon said issues as follows:

1. What, on the 24th day of January, 1918, was the actual market value of the land sought to be taken from defendant Rindge Company?

Answer. (Forty foot strip $184.00
(Additional parcels $220.00
Total $404.00

610 2. Will the remaining portion of defendant Rindge Company's land, not sought to be taken, be damaged by reason of the severance therefrom of the part which is sought to be taken?

Answer. No.

3. If your answer to the last interrogatory was in the affirmative, what do you find the amount of such severance damage to be?

Answer. None.

4. How many miles of fencing will it be
611 necessary to construct on the property of defendant Rindge Company by reason of the taking and use for public highway purposes of the land sought to be taken from defendant Rindge Company? This question must be answered in the light of the concession made by plaintiff, which I have quoted in the instruction.

Answer. 3.87 miles.

5. What kind of fencing wil be suitable to be constructed on the land of defendant Rindge
612 Company by reason of such taking and use of its land sought to be taken?

Answer. Thirty-six inch woven wire with two barbed wires above, with suitable posts.

6. What will be the cost of such fencing on the land of defendant Rindge Company?

Answer. $675.00 per mile—total $2612.25

And it appearing to the court that a stipulation has heretofore been entered into by and between the plaintiff and all of the defendants

appearing and answering herein, which stipulation provides as follows:

"First: That the judgment in the above entitled cause need not be entered within twenty-four (24) hours after the rendition of the verdict, but that such judgment may be entered upon or after the filing of the findings of fact and conclusions of law by the court in the same manner as in cases tried by the court without a jury;

Second: That the memorandum of costs and disbursements need not be served or filed within five (5) days after the verdict, but that the same may be served and filed within five (5) days after notice that the findings of fact and conclusions of law made by the court have been filed."

Now, therefore, by reason of the law and the premises and the findings and conclusions of the court, and the said verdict, it is hereby ordered, adjudged and decreed, that upon payment by plaintiff, the County of Los Angeles, to the defendant, Rindge Company, a corporation, or upon deposit in court by said plaintiff for said defendant of the moneys assessed in said verdict as the value of the parcels of land taken by plaintiff from the said defendant and hereinafter described, and for the cost of constructing fencing upon the lands of the defendant, amounting in the aggregate to be paid to

616 the defendant, Rindge Company, a corporation, to the sum of three thousand sixteen and twenty-five hundredths dollars ($3,016.25) and costs; within thirty days after the entry of this judgment, according to law, the plaintiff take the lands hereinafter described for the purposes alleged in the plaintiff's said complaint herein, and that final judgment for the said property for the public use in the manner proposed by the plaintiff be made and entered according to
617 the law.

It is further ordered, adjudged and decreed that the defendant have and recover from the plaintiff its costs herein, taxed at $4.50.

The following is a description of the lands condemned in this action, and herein referred to:

(Description.)

Done in open court this 5th day of February,
618 1919.

PAUL J. McCORMICK,
Judge of the Superior Court.

Endorsed: Filed Feb. 5, 1918. H. J. Lelande, clerk; by E. A. Wickersham, deputy.

Docketed Feb. 13-19; entered Feb. 13-19; book 431, page 266; by Irving Baxter, deputy clerk.

619 [TITLE OF COURT AND CAUSE.]

Clerk's Certificate to Judgment Roll.

I. H. J. Lelande, county clerk of the county of Los Angeles, state of California, and *ex-officio* clerk of the Superior Court in and for said county, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled action, and recorded in judgment book 431 of said court, at page 266. And I further
620 certify that the foregoing papers, hereto annexed, constitute the judgment roll in said action.

Witness my hand and the seal of said Superior Court this Feb. 13, 1919.

(Seal) H. J. LELANDE, *Clerk.*

By W. B. HITCHCOCK, *Deputy.*

Judgment roll filed and entered Feb. 13, 1919, in book 431, page 266. H. J. Lelande, clerk; by
621 W. B. Hitchcock, deputy.

[TITLE OF COURT AND CAUSE.]

Final Order of Condemnation.

It appearing to the satisfaction of the court that the plaintiff in the above entitled action has deposited with H. J. Lelande, county clerk of Los Angeles county and *ex-officio* clerk of the Superior Court of said county, for the defendant herein, as required by that certain interlocu-

622 tory judgment of condemnation made and filed in the above entitled cause on the 5th day of February, 1919, and recorded in book 431 of judgments, page 266, records of the clerk of the above entitled court, as follows:

The sum of $3,016.25 for the defendant, Rindge Company, a corporation; and

It further appearing to the court that plaintiff, County of Los Angeles, on the 5th day of April, 1919, filed with the clerk of the court
623 "Notice of Election to Fence" in words following, to-wit:

"To the Defendant, Rindge Company, a Corporation, and to Its Attorneys, Anderson & Anderson and Nathan Newby:

You and each of you will please take notice that the plaintiff, County of Los Angeles, hereby elects to build and construct 3.87 miles of 36 inch woven wire fence, with two barb wires above, with suitable posts, as specified by the
624 verdict of the jury in the above entitled action, which are the fences for which damages have been assessed in said action.

Dated Los Angeles, California, April 4th, 1919.

A. J. HILL,
County Counsel;
C. S. BURNELL,
Deputy County Counsel;
PAUL VALLEE,
Deputy County Counsel,
Attorneys for Plaintiff."

625 Now, therefore, on motion of A. J. Hill, county counsel; Charles S. Burnell, deputy county counsel, and Paul Vallee, deputy county counsel, attorneys for plaintiff, it is ordered, adjudged and decreed that the parcels of land hereinafter described be, and the same are hereby condemned for public highway purposes.

Said parcels of land so condemned for public highway purposes are more particularly de-
626 scribed as follows:

(Description.)

Done in open court this 18th day of April, 1919.

PAUL J. McCORMICK,
Judge of the Superior Court.

Endorsed: Filed Apr. 18, 1919. H. J. Lelande, clerk; by E. C. Polsue, deputy.

Docketed Apr. 29, 1919; entered Apr. 29,
627 1919; book 431, page 271; by G. S. Clarke, deputy clerk.

[TITLE OF COURT AND CAUSE.]

Clerk's Certificate to Judgment Roll.

I. H. J. Lelande, county clerk of the county of Los Angeles, state of California, and *ex-officio* clerk of the Superior Court in and for said county, do hereby certify the foregoing to be a true copy of the judgment entered in the above-

entitled action, and recorded in judgment book 431 of said court, at page 271. And I further certify that the foregoing papers, hereto annexed, constitute the judgment roll in said action.

Witness my hand and the seal of said Superior Court, this Apr. 29, 1919.

(Seal) H. J. LELANDE, *Clerk*.

By W. B. HITCHCOCK, *Deputy*.

Judgment roll filed and entered Feb. 29, 1919, in book 431, page 271. H. J. Lelande, clerk; by W. B. Hitchcock, deputy.

[TITLE OF COURT AND CAUSE.]

Notice of Appeal.

To the Above-Named Plaintiff, and to Its Attorneys, A. J. Hill, County Counsel; Charles S. Burnell, Deputy County Counsel, and Paul Vallee, Deputy County Counsel, and to Hon. H. J. Lelande, County Clerk:

You, and each of you, will please take notice that the defendant, Rindge Company, a corporation, hereby appeals to the Supreme Court of the state of California from the interlocutory judgment and decree of condemnation heretofore rendered against it, in the above-entitled action, and from the whole thereof, and also from the final order and judgment of condemnation signed by the court and filed with the clerk

631 of the court on the 18th day of April, 1919, and from the whole thereof.

Dated April 28th, 1919.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Defendant.

Endorsed: Received copy of the within notice this 28 day of April, 1919. A. J. Hill, county counsel; by C. S. Burnell, attorney for plaintiff.

Filed Apr. 28, 1919. H. J. Lelande, clerk; by
632 E. D. Doyle, deputy.

[TITLE OF COURT AND CONSOLIDATED CAUSES.]

Stipulation as to Various Descriptions.

It is hereby stipulated and agreed that the various metes and bounds descriptions of the rights-of-way strips and parcels contained in the judgment rolls in the above-entitled action
633 may be omitted in printing the transcript on appeal to the Supreme Court in said cases, such omission in each instance to be indicated by the following "(description)."

Dated April 9th, 1920.

A. J. HILL,
County Counsel;
PAUL VALLEE,
Deputy County Counsel,
Attorneys for Plaintiff.
ANDERSON & ANDERSON and
NATHAN NEWBY,
Attorneys for Defendants.

634 Endorsed: Filed Apr. 9, 1920. L. E. Lampton, county clerk; by O. M. McAulay, Jr., deputy.

[TITLE OF COURT AND CONSOLIDATED CAUSES.]

Bill of Exceptions.

Be it remembered that the following stipulations have been heretofore made and entered into by and between the parties to the above-
635 entitled actions:

First—In Case No. B-43572:

(Title of Court and Cause.)

"The motion of the Rindge Company, a corporation, and May K. Rindge, defendants in the above-entitled action, to strike out the map annexed to the complaint therein as amended came on for hearing on the 19th day of September, 1918, and upon said hearing said mo-
636 tion was denied; whereupon it was stipulated and agreed, and is now stipulated and agreed, that the ruling upon said motion may be exemplified in the general bill of exceptions should an appeal be ultimately taken by the said defendants upon the merits.

"It was further stipulated and agreed, and is hereby stipulated and agreed, that said motion should be deemed to be a motion for the modification of the map by striking out the various

637 phrases objected to therein in the event the motion to strike out the map was itself denied, and it is understood and agreed that both of such motions were presented to and heard by the court and were denied, and that in the ultimate bill of exceptions in this matter, in the event of an appeal by said defendants, there may be included the proceedings pertaining to the same."

Second—Jointly in both of the above-entitled cases:

638 (Title of Court and Causes.)

"It is hereby stipulated and agreed that but one bill of exceptions need be prepared in the above-entitled cases, and that such bill of exceptions when prepared and settled shall be deemed for all purposes to be a bill of exceptions in each of said cases.

"Dated April 9th, 1919."

(Title of Court and Causes.)

639 "It is hereby stipulated and agreed that upon the appeals in the above-entitled actions all of the exhibits in said actions which are referred to and would otherwise be included in the bill of exceptions therein may be certified to the Appellate Court by the clerk of the above-entitled court for the purposes of such appeal, and may for such purposes be deemed to be included in and a part of such bill of exceptions.

"Dated April 9th, 1919."

640 Be it further remembered, that these causes (together with Cause No. 65893 entitled The County of Los Angeles v. The Rindge Co., *et al.*, concerning the condemnation of certain other property for highway purposes) came on regularly for trial on September 30th, 1918, before the court and a jury (the jury being impanelled for the purpose of trying and trying only the question, in each case, of the amounts of dam-
641 ages to be awarded the several defendants therein), Messrs. Charles E. Burnell, deputy county counsel, and Paul Vallee, deputy county counsel, appearing as the attorneys for the plaintiff in each of said cases, and Messrs. Anderson & Anderson (represented in court by W. H. Anderson) and Nathan Newby, Esq., appearing for all of the answering defendants in each case.

Thereupon the following proceedings were
642 had and taken:

It was stipulated and agreed that the three cases might be tried on the questions of damages by the same jury, but not as consolidated cases.

The plaintiff then made a motion to strike out certain portions of the amended answers of the defendants, May K. Rindge and Rindge Company, in Case No. B-43572, referred to throughout the trial and herein referred to as the Main

643 Road Case, which motion as to such portion was denied.

At the same time the plaintiff moved the court to strike out the following portions of the amended answer of the defendant, May K. Rindge, in said Case No. B-43572, to-wit:

And for another and further and separate answer and defense this defendant alleges:

I.

644 That all of the properties described in paragraphs II and VI of the complaint and in any way involved in this action are entirely upon and within the boundaries of that certain ranch situate in the county of Los Angeles, state of California, commonly known as the Malibu Ranch.

II.

That while a portion of said Malibu Ranch is owned by the defendant, May K. Rindge, and
645 the remaining portion thereof by the defendant, Rindge Company, the said ranch as a whole is now, and was at the commencement of this action, and for more than twenty years prior thereto had been, treated, operated, managed and controlled as a single ranch under one joint management and control; and has at no time ever been severed or segregated into parts or parcels or treated or handled or managed by the owners thereof as other than a single ranch and holding.

646 III.

That said method of holding, managing and controlling said ranch by its said two owners has at all times been known to the plaintiff and to the public in general.

IV.

That said Malibu Ranch as such and under that name and designation and as embraced in the original purchase of the same by the defendant, May K. Rindge, and the predecessor
647 in interest of the defendant, Rindge Company, at the point where the proposed road sought to be condemned herein terminates at the westerly end of said road, ends at and upon the boundary line between the counties of Los Angeles and Ventura, state of California; but that the defendant, Rindge Company, is the owner and in the possession of, and was at the date of the commencement of this action, the owner and in
648 the possession of property immediately adjacent thereto in the said county of Ventura, and forming a continuation into said county of Ventura for a distance of about miles of the said ranch under the said joint management and control of the said defendants, May K. Rindge and Rindge Company.

V.

That there was not at the commencement of this action and is not now in the said county of Ventura at any point either contiguous to or

649 upon any part or portion of said property of the Rindge Company or within miles of the western, that is to say, the Ventura county, end of said ranch, any public road of any kind or character whatever; and that said ranch can be reached from said end only and wholly by private trails and ways.

VI.

That there was not at the commencement of this action, and is not now, any public road or
650 way of any kind or character either upon that portion of said Malibu Ranch located in Los Angeles county or upon that extension of the same in Ventura county; and that the said proposed road or highway sought to be condemned and taken in this action would, if condemned and taken, be located wholly and solely upon that portion of the said Malibu Ranch situated in Los Angeles county, would end and terminate
651 upon the private property of the defendant, Rindge Company, at the Ventura county line; would have no laterals or outlets or feeders of any kind or character; would be located wholly and solely upon, and give access wholly and solely to, the private ranch property of the defendants, May K. Rindge and Rindge Company; and would not and could not furnish any way of necessity or convenience to the general public or for public use or travel.

652 VII.

That neither of said defendants owners of and jointly managing and controlling said Malibu Ranch as a whole, has any need or desire for said or any public road upon said ranch or upon any part or portion thereof; but that, on the contrary, any such public road would be a constant and continuous menace and damage to their said ranch property, and would largely de-
653 stroy its value as a unit for ranch purposes; and would be and constitute a continual nuisance and expense to the said defendants.

VIII.

That by reason of the premises the taking of any part or portion of said property as contemplated by the plaintiff and as prayed for in the complaint for road or highway purposes would be without necessity of any kind or right, and in contravention of the provisions of the Con-
654 stitution of the United States, and particularly in violation of the fourteenth amendment to said Constitution, and would be void and without due process of law, and constitute a denial to the defendants, May K. Rindge, and Rindge Company, of the equal protection of the laws under the Constitution of the United States, and would contravene the said fourteenth amendment to said Constitution.

Said motion was made upon the grounds and for the reason that all of the matter asked to

655 be stricken out, and each of the separate matters, is irrelevant and immaterial and constitutes mere surplusage and conclusions of law and of the pleader and none of the matters asked to be stricken out are matters of fact, ultimate or otherwise, nor are any of them allegations upon which the court would have the right or the power to admit or receive evidence.

656 That the said motion of the plaintiff to strike out said portions of said amended answer of the said defendant, May K. Rindge, above set forth was thereupon granted by the court and the court made an order striking out the same, and the whole thereof, to which ruling and order the said defendant, May K. Rindge, and her co-defendants in said Case No. B-43572 then and there duly excepted; and the said ruling is hereby assigned as error.

Exception No. 1.

657 That thereupon and at the same time the plaintiff moved the court to strike out, upon each and all and every of the same grounds, a similar special defense in the same identical words and figures pleaded in the amended answer of the defendant, Rindge Company, in said Case No. B-43572, which motion the court then and there granted, and the court thereupon made an order striking out said special defense from the said amended answer of the defendant, Rindge Company, to which ruling and order the

658 said defendant, Rindge Company, and its co-defendants then and there duly excepted, and hereby assign the same as error.

Exception No. 2.

That at the same time the plaintiff upon each and all and every of the said grounds moved the court to strike out a paragraph known and designated as paragraph IX from each of said amended answers, to-wit: of the defendants, May K. Rindge and Rindge Company, which
659 said paragraph IX in each of said amended answers was in the words and figures following, to-wit:

"IX

"That she (it) denies, according to her (its) information and belief, that the map filed herein by way of amendment to said complaint and marked Exhibit "A" correctly delineates the parcels of land sought to be condemned herein;
660 but just to what extent it is deficient and incorrect in these regards this defendant has not sufficient knowledge, information or belief to aver."

That the court then and there granted said motion, and made an order striking out said paragraph IX from said amended answers of said defendants, to which ruling said defendant then and there duly excepted, and hereby assign the same as error.

Exception No. 3.

661 Thereupon a jury was duly impaneled and sworn to try such issues in this case as might be submitted to them.

It was then stipulated that the jury, accompanied by the court and counsel, might be taken over as much of the proposed right of way for the several proposed highways involved in this suit as were feasible.

The following proceedings (commencing on
662 October 1, 1918) were then had:

Mr. Anderson: There is one matter that I did wish to bring to the court's attention. I don't know that this is the proper time but this is a matter that has in one sense been determined by the law and motion department of this court. We expect to renew it however, by way of an objection at this time, or at the proper time, and that is this: We are going to object to the map, Exhibit "A" to the complaint, in
663 the main case, and the map Exhibit "A" in the Alisos Canon case and the Beach case, being submitted to the inspection of the jury upon the ground that they contain matters in the nature of evidentiary matters, or facts, therein, which appear to be improper, and which, in our judgment, should not be submitted to the jury since they are conclusions of the surveyor who made the map. In other words, it contains data such as "Pasture land," or "Grazing land," or "Cul-

664 tivated land," which evidentiary matters should not be on the map and which would go in, in a sense, as being proven, without the possibility of examining the surveyor under oath, or of cross-examination. As I said before, in all fairness to the court, it was raised before Judge Weller, and he denied the motion to strike out the matter, and I submit that if Your Honor will examine the map you will see the point of
665 the objection.

The Court: Is it an exhibit in the case?

Mr. Anderson: It is attached to the complaint and under ordinary procedure would be submitted to the jury and would necessarily form the basis of an examination. My own opinion is that it contains matters that are evidentiary.

Mr. Burnell: You say it is attached to the complaint?

666 Mr. Anderson: It is not attached to the complaint, but it is filed with the complaint. I will submit to the court our copy for the purpose of an examination. The defendants are perfectly willing that those particular matters to which we have referred, may be inked out and the map reformed in that regard but we have them at present in the form of evidentiary matter which is not under oath.

The Court: Is it intended by the county

667 counsel to be put in as evidentiary matter without proof?

Mr. Burnell: No, Your Honor, it is not.

(Discussion.)

The Court: We will determine that matter definitely when the question rises.

Mr. Burnell: Then, if Your Honor please, we will offer certain resolutions; we desire to offer in evidence a resolution found on page 344, volume 17, road book of Los Angeles county, 668 the same being a resolution which is set forth in the complaint in the main or Malibu Road case (No. B-43572). The resolution being one that purports to have been adopted at a meeting of the board of supervisors of Los Angeles county held on the 26th day of August, 1916, and the record shows on the face of it that the resolution was carried by a vote of all the supervisors, the notation being as follows: "On motion of 669 Supervisor Hinshaw, duly seconded and carried by the following vote, ayes, Hamilton, Norton, Woodley, Hinshaw, and Pridham—noes, none. It is ordered that the following resolution be and is hereby adopted." Then follows the resolution.

Mr. Anderson: We waive the reading of the resolution.

The resolution in question (omitting the descriptions of the right of way and of the prop-

erty sought to be condemned) was and is as follows, to-wit :

"Whereas, The public necessity and interest of the people of the county of Los Angeles do require that a certain highway be constructed in said county over and across those certain parcels of real property hereinafter described, and for that purpose and for such public use it is necessary that those certain pieces or parcels of real property hereinafter described be acquired by said county by condemnation, namely: the following described property located in the county of Los Angeles, state of California, to-wit:

A strip of land 40 feet wide being a portion of the Rancho Topango-Malibu-Sequit, as shown on map recorded in book No. 1, page 414, et seq. of patents, records of Los Angeles county, said strip being bounded easterly by the easterly line of said Rancho, and bounded westerly by the westerly line of said Rancho, and lying 20 feet on each side of the following described center line:"

(Here follows description as set forth in the complaint.)

"Also the following described parcels of land, being in Division 1 of said Malibu Road as shown on said county surveyor's map No. 8070 on file in the office of the surveyor of Los Angeles county."

(Here follows the description of parcels lying on both sides of said forty foot strip, as fully set forth in the complaint.)

"Further reference is hereby made to said county surveyor's map No. 8070 on which the location of all parcels of land herein described is accurately shown."

"Now, therefore, be it resolved, and it is the finding and determination of this board, that the public interest and necessity require the acquisition by the county of Los Angeles of those certain pieces or parcels of land hereinbefore described for a public purpose, namely, for public highway purposes, and for the construction and completion of a public highway thereover; and,

Be it further resolved, that those certain pieces or parcels of land hereinabove described be condemned for a public purpose, namely, for a public highway and the construction and completion thereof and the county counsel of the county of Los Angeles is hereby directed to institute proceedings in the Superior Court of the state of California, in and for said county of Los Angeles for the condemnation of those certain pieces or parcels of real property hereinabove described for public highway purposes, and to take all steps necessary for the condemnation of such pieces or parcels of land in the name of said county."

676 The next offer, if the court please, is the resolution of the board of supervisors, passed on the 3rd day of December, 1917, being at a regular meeting of the board of supervisors, of Los Angeles county, held on that date, being found in road book No. 19, commencing on page 77, being the resolution authorizing the condemnation of land for the right-of-way for the road we have referred to as the Los Alisos road (in
677 case No. B-59,443).

Mr. Anderson: We have no objection to it being deemed read, we only object to his saying that it was "Authorizing." We will substitute for that, "Purporting to authorize."

Mr. Burnell: I am reading the title out of the book.

Mr. Anderson: They may be deemed admitted on the same objections, as we made to the resolution in the main case.

678 Mr. Burnell: It is the original resolution of condemnation and we desire at this time in connection with that to read this part: "On motion of Supervisor McClellan, duly seconded and carried by the following vote, ayes, Woodley, McClellan, Dodge & Hamilton; noes, none; it is ordered that the following resolution be and the same is hereby adopted." And then follows the resolution as set forth in the complaint in the Los Alisos Canon case.

679 This resolution, omitting the descriptions, which are fully set forth in the complaint in Case No. B-59,443, was and is identical in form and language with the resolution in Case No. B-43572, above set forth.

Mr. Anderson: We have no objection to it being admitted under the same conditions, deemed read, subject to a correction.

Mr. Anderson: Then, at this time, I think in
680 view of our arrangement and stipulation as to visiting the ranch, we had better take an adjournment until five minutes of nine tomorrow morning.

The Court: Very well.

(Adjournment taken until 9 A. M., October 2, 1918).

On October 2d, 1918, the jury, accompanied by the court, its officers and counsel for all parties in each of the cases, visited and inspected
681 the proposed route for rights of way, and the larger parcels of land of which they form a part, pursuant to stipulation of all parties.

Mr. Anderson: Have you rested?

Mr. Burnell: Yes, we have rested.

Mr. Anderson: If the court please, we wish to move for a non-suit on the ground that the plaintiff in this action has failed to prove the facts which by section 1241 of the Code of Civil Procedure must be made to appear before the plaintiff can condemn the property.

682 First: That they have failed to prove that the taking is necessary to the use in question, namely, highway purposes;

Second: That they have failed to prove the public necessity of such proposed public utility or public improvement;

Third: That they have failed to prove that such property which it is proposed to be taken is necessary therefor;

683 Fourth: That they have failed to prove that such public utility or public improvement is planned or located in the manner which would be most compatible with the greatest public good and the least private injury.

Without arguing the matter, I will simply state that our position is simply this: That if the proviso in Section 1241 (C. C. P.) is, as we contend and as Your Honor has in a sense held, unconstitutional, there is nothing else in the 684 statute which makes the resolution on which they rely—makes it *prima facie* evidence. In other words, the statute seems to contemplate that while the resolution can be adopted, the matters to be determined that I have just enumerated, are to be determined by the court, and there is nothing which makes the resolution itself, so far as I can find in the law, *prima facie* evidence. In other words, eliminating that proviso, the law simply stands that the burden is

685 on the plaintiff to make these facts appear before condemnation can be had.

The Court: The motion for judgment of non-suit will be denied.

To which ruling the defendants duly excepted, and hereby assign the same as error.

Exception No. 4.

MAY K. RINDGE,

one of the defendants, called as a witness in her
686 own behalf, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Anderson:

My name is May K. Rindge. I am one of the defendants in this action, of the County of Los Angeles v. The Rindge Company and others, which is referred to as the main case, and I am the owner of the eastern portion of the Malibu
687 Ranch, through which the proposed road is sought to be condemned. The Rindge Company owns the balance. I am the president of the Rindge Company, composed of myself and two children. I have been familiar with this property known as the Rindge Ranch or Malibu Ranch since 1892. That property has been always under one management and control since it was acquired. My husband, Frederick H. Rindge, died August 29th, 1905. Since then I have had general management and control of the

688 ranch, with my children. I have kept myself familiar with all matters pertaining to the ranch, and am familiar with all matters with reference to this road question. I was not present, or anyone, so far as I know, connected with our company, at any hearing before the board or supervisors in connection with the proposed road through this ranch prior to the adoption of the resolution of August 26th, 1916. I had no
689 knowledge whatever prior to that time, either as president of the corporation or otherwise, that such a resolution was contemplated.

Redirect-Examination.

I am familiar with the case that is known as the Alisos Canon road case and was served with the complaint and summons in that case, both individually and as president of the Rindge Company. Prior to the receipt of that complaint and summons, I had no knowledge of the fact
690 that that resolution was contemplated or had been passed; I had no knowledge, either on behalf of myself or of the Rindge Company.

Cross-Examination

By Mr. Burnell:

Q. Mrs. Rindge, were you present at any meeting of the board of supervisors at any time in which the condemnation of the right-of-way for a road through Malibu Ranch was considered?

691 Mr. Anderson: Now, if Your Honor please, I have an objection to that, on this ground: It is entirely too broad and while we are taking evidence in three cases, all questions of that character should be segregated and limited to each case.

The Court: Well, it is cross-examination.

Mr. Anderson: But I also object on the ground that it is immaterial, whether she was
692 before the board of supervisors subsequent to August the 26th, 1916.

The Court: Objection overruled.

This ruling is assigned as error.

Exception No. 5.

A. I don't think so.

Mr. Anderson: Just a moment, so that Mrs. Rindge understands the question: The question is, at any time were you there with reference to the condemnation.

693 A. I was there when Mr. McClellan was considering (interruption).

Q. Now, do you remember, Mrs. Rindge, the date of that meeting of the board A. No; it was just last spring some time. Mr. Anderson, Mr. Newby and Mr. Scotton were present. Mr. Scotton is secretary; he is not secretary of the company, he is secretary of the Rindges. Those gentlemen and members of the board were present. It was a public session; there were others present. There were a lot of people there I had

694 not met; but there was Mr. Miller, who owns land in Ventura county, and Mr. Fitzpatrick, I believe, and Mrs. Decker was there. I suppose there were people there who favored the opening of the road, or roads, through the Malibu, and people who were unfavorable.

Q. I mean by that, Mrs. Rindge, that some of them addressed the board asking the board to condemn the right-of-way, and some addressed the board asking them not to; is that correct?

695 A. No, not as I remember. Mr. McClellan when he was first elected, I went to see him about the road, and he said he thought he had a road through the Triumfo, which would please the Rindges and the settlers too. It was on this account that that meeting came up, and we presented the twenty thousand names to get the road through the Triumfo instead of the Malibu. It was not for the Malibu condemnation I was

696 there. It was the Triumfo. The question was to put the road through Triumfo, as I understood it. I think there were others there who advocated the road through the Malibu. Some wanted the road through the Malibu and some through Triumfo.

Q. Did you, or any representatives of the Rindge Company, either Mr. Anderson, Mr. Newby, Mr. Scotton or yourself, make any statement to the board as to their views in the matter? A. Yes, I think Mr. Anderson did.

697 The board listened to Mr. Anderson so far as I recollect. I made a statement to the board at that time, and Mr. Guernsey made an address, advocating the not putting of the road through. Mr. Guernsey was not our attorney. We had employed him, but not as an attorney.

Q. Isn't is a fact that at that meeting, Mrs. Rindge, yourself, Mr. Newby, Mr. Anderson and Mr. Guernsey were the only persons present in the room who addressed the board in oppo-
698 sition to the making or acquisition of the road through the Malibu Ranch? A. There were others there in sympathy with the road through Triumfo, whether they spoke or not, I don't know.

Q. If there was others in sympathy, they did not express their opinions orally, in your presence, before the board? A. I don't think we wanted them to, or requested them to; I don't
699 remember.

Q. What is the fact, so far as you can remember? A. I don't recall. It was a regular Bolsheviki meeting, and I was frightened out of my life, I didn't like it a bit, and I don't remember.

Q. Isn't it fact, so far as you can recollect at the present time, that the only business at that meeting and the only persons who spoke in opposition to the road being put through the Malibu, were yourself, your employes and attor-

700 neys? A. I don't recall any others at present, although there may have been.

The Witness: I thought the proceeding was this spring; some time towards April or somewhere along there, but I am not clear in my mind. It might have been some other time. You see this has been going on for so many years that I forgot. You see I have had this for eleven years or more.

701 Q. How many meetings did you attend—that is, meetings of the board of supervisors, in which the question of the building of a road through the Malibu Ranch was the subject of discussion? A. I don't know that I attended any. I attended the one through the Triumfo, and the Malibu came up in that, but the purpose was for the discussion of the Triumfo route. I think I received a communication from the board of supervisors, from the clerk, in the 702 month of May, 1918, in regard to the meeting of the board. I wouldn't be sure. Mr. Scotton will know if it is in the office or not. I had no personal knowledge that the board of supervisors contemplated proceedings for the acquisition of a road through the Malibu Ranch prior to the time the resolution was passed in August, 1916, or until the ordinance was passed.

Mr. Burnell: Mrs. Rindge, the question of a road through the Malibu Ranch from the eastern terminus of the ranch at Las Flores Canyon,

703 or thereabouts, has been to your knowledge a subject of public discussion for a number of years prior to 1916, has it not? A. The newspapers have had quite a little to say—not through the ranch, but to the Malibu line. It is to the ranch line, not beyond the Ventura county line.

Mr. Anderson: We will stipulate that this document was signed by May K. Rindge and by
704 The Rindge Company by May K. Rindge, president, and was accompanied by the document which you handed me (referring to a paper).

Mr. Burnell: I will show it to Mrs. Rindge. Mrs. Rindge, I hand you here a document which bears the stamp on the back, "Filed July 10, 1917, M. B. Beatty, deputy county clerk, *in re* Malibu Ranch, communication from May K. Rindge and Rindge Company" which counsel has stipulated bears your signature, and your
705 signature is also under the name "Rindge Company by May K. Rindge" or M. K. Rindge"? A. Yes.

Q. I will ask you to look at that document, if you will, which you will notice is dated July, 1917, and having looked at it see if it refreshes your recollection in any particular as to the meeting that was held, if the meeting was held in 1917. (Witness examines paper.) A. I don't remember as to the date. I believe I re-

706 ceived that. I believe that was addressed to the board of supervisors.

Q. It has been stipulated that it was signed by yourself. A. Yes, sir.

Q. Now, having glanced over this document, is your memory refreshed as to any of the things about which I asked you with regard to a meeting in October, 1917, of the board of supervisors? A. There was a meeting but the settlers from Ventura county and in back of the
707 ranch, they occupied the meeting, and I think Mr. Anderson was the only one that spoke. I think all the people from Abbott Kinney's crowd from Venice, and some of the others spoke, that is, the people from Venice and the settlers up in the hills back of the ranch. I do not remember that they spoke in favor of a road through the Malibu; they were just agitating generally a road through this Malibu. Mr. Anderson spoke
708 against such a road. We had property to conserve and protect. Most of those who spoke did not even have a deed to the land. They had nothing. Some of those who spoke live, mostly, or some of them, have positions in the hall of records and in the city hall, and some of them have positions in Santa Monica and some of them live between our ranch and the Broome Ranch and between our ranch and the state highway. I don't think there was anybody there named Decker who spoke, not the first meeting

709 I don't recall; I don't think anybody named Vaughan nor Fitzpatrick spoke; I think he spoke at the last meeting; I don't remember the first meeting. At that meeting in October, 1917, the question as to whether or not a road should be built through the Malibu Ranch was not discussed before the board of supervisors. Mr. Anderson was the only one on our side; I don't think it was discussed. Mr. Anderson was then my attorney and represented me individually and
710 the Rindge Company and my family. I was present myself. I didn't make a statement at the first meeting.

Q. I now show you another document entitled "Petition for Abandonment of Proceedings for construction of highway through Malibu Ranch and for dismissal of condemnation suit," marked "Filed in the board of supervisors office, May 11, 1918, H. J. Lelande,
711 clerk, by M. B. Beatty, deputy." I will ask you if that is your signature subscribed to it, and I will ask you if the signature is yours. A. Yes, sir. And the other signature with a rubber stamp, "The Rindge Company, by May K. Rindge" is my signature. This communication was sent by me or by my authority to the board of supervisors.

Q. I will ask you if this was not sent at about the time it was dated, May 11th, 1918.

Mr. Anderson: So stipulate.

712 Q. Now, in response to, or after you had sent the communication, did you get a notice from the board of supervisors, advising you of the fact that a meeting would be held? A. I got one from Carl Haas, deputy county counsel. After that communication I then attended this second meeting of the board, held some time in the spring of the year. I now recall the fact that there was two meetings instead of one at which I was present. At both of those meet-
713 ings our attorneys were present. At both of those meetings, talks were made to the board of supervisors by myself and by Mr. Anderson the first time, Mr. Anderson and Mr. Newby the second time, and Mr. Guernsey.

Q. So that the second meeting was the one in May, yourself and two of your attorneys and Mr. Guernsey all addressed the board in opposition to the project of a road through the Mal-
714 ibu? A. They were all opposing putting the road through.

Mr. Burnell: That is all.

Mr. Anderson: Now, if Your Honor please, I desire at this time to offer in evidence the document identified as having been sent by her on May 8th, 1918, and relating to the meeting, concerning which she has been examined. I will read this into the record. "Los Angeles, Cal., May 8th, 1918. To the Honorable Board of Supervisors of Los Angeles County. Gen-

715 tlemen. The undersigned hereby respectfully petitions that all further procedings for the construction of a highway through the Malibu Ranch be abandoned, and that the condemnation suit now pending in the Superior Court of the State of California, in and for the County of Los Angeles, commenced for the purpose of condemning a right of way for road purposes, be ordered dismissed. In support of such pe-
716 tition we respectfully represent:

First: That said suit was commenced prior to the declaration of war by the United States against Germany and her allies, and conditions are now quite different from those existing when these proceedings were commenced.

Second: That it is the policy of the federal government announced not only by heads of departments, but by an act of Congress adopted April 5th, 1918, that all demands for public
717 improvements in excess of $100,000 should be submitted to a commission appointed by the President, to determine whether or not the contemplated improvement is essential to the successful conduct of the war, upon which all of our resources must be concentrated.

Third: The condemnation of a right of way through the Malibu Ranch and the construction of the contemplated highway would cost approximately $1,000,000 and by no stretch of the

718 imagination can such improvement be considered as a war essential.

Fourth: In addition to the great cost of such construction work it would also entail upon your petitioners unnecessary expenses and hardships in addition to those heretofore suffered in defense of fruitless litigation.

Wherefore, your petitioners respectfully represent that the public interest would best be served by abandoning the contemplated con-
719 struction of a highway through the Malibu Ranch and the condemnation suit now pending for that purpose, at least until after the war; and we request that a time be fixed for a hearing and consideration of this petition.

Respectfully submitted,

MAY K. RINDGE.

RINDGE COMPANY,

M. K. RINDGE."

720 The Witness: This meeting that was held later in that year 1918 was in response to this petition. In general substance what the contention was that was made before the board and what my attorneys asked them to do was to put the road through the Triunfo instead of the Malibu. Mr. James Anderson was present and not you. This meeting was with Mr. James Anderson and Mr. Newby and Mr. Guernsey, and they spoke in our behalf, in pursuance of this

721 petition you have just read. The substance of what they requested the board at that time was to defer it until after the war, on account of the war conditions and that is the only matter that was discussed by them so far as I can say.

Q. Now, Mrs. Rindge, you were shown this letter or communication of July 7th, 1917, and which we have stipulated was signed by you. I will ask you if you know whether or not it contained an enclosure. A. I think it contained
722 Judge Bean's decision.

Q. I will show you this document and ask you if that is the enclosure that went with it (indicating a document.) A. Yes. That is the document that accompanied it (indicating a paper).

Mr. Anderson: Now, if the court please, I offer the petition and the accompanying document for the purpose of showing what was done
723 by Mrs. Rindge and the Rindge Company in connection with the bringing about of this meeting in question. The petition in question was then read into the record and was as follows:

"Los Angeles, California, July 7, 1917.

To the Hon. Board of Supervisors,
of the County of Los Angeles,
State of California.

Gentlemen:

Our attention has been called to an article published in the 'Santa Monica Outlook' of June

724 30, 1916, in which it is stated that "The Santa Monica-Ocean Park Chamber of Commerce is assisting the owners of ranches in the Malibu Mountains in circulating a petition to the county supervisors to open a road that will enable the ranch owners to convey the necessities of life to their homes.'

The proposed petition is set out in full in this article. As it will doubtless come before you, it is unnecessary at this time to set it out here.
725 Suffice it to say that it in effect recites that by reason of the recent decision of the Supreme Court of this state in the case of People vs. Rindge (commonly known as the Maliby road case), which was decided in our favor, and by reason of the alleged failure of our recent legislature 'to pass proper legislation by which the state and counties of Los Angeles and Ventura would be enabled to build the military road
726 through the Malibu Ranch,' and unless the petitioners can look to you 'for immediate relief' they will be placed in danger of losing their holdings 'and of being forced to part with them to those who are more fortunate because of said Supreme Court's decision and the said Act of the Legislature,' and further reciting that they desire to have rights of way so that they 'may have such necessities of life across the Malibu Ranch unhindered and without molestation.'

727 In the first place we desire to most emphatically assure your board that we have not now and never had any intention of attempting to acquire and do not desire to acquire any of the properties of any of these 'settlers' although we have always rested under the belief that many of these 'settlements' were made with the view to eventually annoying us into buying the 'settlers' out.

728 This, however, has nothing to do with the real situation and we only refer to it because of the crude intimation in this proposed petition, that the 'settlers' may be compelled to sell out to us who are undoubtedly referred to as those 'who are more fortunate because of said Supreme Court's decision and the said act of legislature.'

729 The litigation by which the county of Los Angeles (acting under the name of the People of the State of California) and the United States Government, have attempted without any tender or offer of compensation, to force various roads through our properties (the Malibu Ranch), having been in the courts for so many years and having been so various in its manifold ramifications, we feel reasonably sure your present board has but a slight understanding of that litigation, of its tremendous expense both to us, to the county and to the federal government, and of the absolute unjustness of it to us from its inception.

730 When the Malibu Ranch was acquired by the undersigned, May K. Rindge and her husband Frederic H. Rindge, early in 1892, while there were several settlers to the north of the ranch and on the ocean side of the mountains in Los Angeles county, there were no settlers to the west of the ranch and on this side of the Ventura mountains, excepting a family by the name of Harris and certain relatives or connections of that family.

731 After acquiring the ranch and in order to avoid any questions, as to roads across it, any of which, if public, would be extremely detrimental to the ranch interests in view of its peculiar situation and many miles of unguarded thickly-wooded canyons and the consequent liabilities to fires and other depredations from irresponsible campers and other trespassers, Mr. Rindge bought out and acquired the interest of all of the settlers in the mountains to the north

732 excepting two, one being Marion Decker, who had a ranch to the north in the mountains up Encinal canyon.

Subsequently and before the litigation, which has been so extensive and expensive, was commenced, other settlers came in and were treated with the utmost consideration by Mr. Rindge, he, in many instances, permitting them to build roads from his ranch roads to their places, but always carefully insisting that these were merely

permissive users and always most vigorously insisting that his ranch roads were in no sense public highways. None of these settlements were west of the ranch.

About 1894, Mr. Rindge proceeded, for ranch purposes, to fence in the eastern portion of the ranch and placed gates across his ranch roads, giving the various settlers keys with the right accorded to them of using the ranch roads, and of letting their friends and people having business with them enjoy a similar privilege (keys for that purpose being left at various places in Santa Monica).

This condition continued harmoniously for some months (perhaps a year or more) when some question was raised by the attorneys for Mr. Decker, who had had some controversy with Mr. Rindge over the use of certain specially constructed private roads, and the result was an agitation of the matter which resulted in a hearing before the board of supervisors in the fall of 1895.

Subsequently and for some years, Mr. Rindge, during his life-time and his representatives after his death, insisted upon the private character of roads through the ranch and did all that they could, although not always successfully, to prevent travel over them.

Finally this state of affairs culminated in the road litigation. In the latter part of 1907, the

736 United States Government commenced an action whereby it was sought to have it decreed that cross roads running down the mountain canyons to the beach road from the ranches of certain settlers, which cross roads amounted to thirteen in number, should be decreed to be public highways created as a matter of necessity over the Malibu Ranch and incidentally that the beach road be decreed to be a public highway by virtue of alleged long usage. In this case
737 an injunction was issued preventing in effect any interference with travel along the beach road and that injunction remained in force until the final decision of the Federal Court in favor of the owners of the ranch.

Incidentally it may be remarked that this case, which proved to be wholly without merit, *caused* the federal government an enormous sum of money (estimated at about $100,000) and
738 also proved very expensive to the owners of the ranch.

At the time of the issuance of this injunction, there were no settlers whatever west of the ranch and this side of the Ventura mountains.

Shortly after the commencement of this federal action, the county, in the name of the People of the State of California, commenced its suit and on May 11, 1910, a judgment was entered therein in favor of the county and against the owners of the ranch, decreeing that a road

739 existed twenty feet in width extending from the eastern end of the ranch at Las Flores canyon to the western end of the ranch to the Ventura line, and enjoining and restraining the ranch owners, defendants in that action, from in any way interfering with the use of that road.

This injunction remained in force even after the federal injunction was dissolved by reason of the decision in the federal case in favor of the ranch owners.

740 On November 8, 1913, Judge Oster, who rendered the decision in People vs. Rindge, granted a new trial of that case insofar as the western end of the alleged road was concerned, which new trial covered that part of the purported highway west from La Chusa Canyon to the Ventura line, but denied the motion for a new trial as to the eastern end extending easterly from La Chusa Canyon to Las Flores.

741 In the meanwhile, and taking advantage of the pendency of injunctions and obviously acquiring no rights thereby, the present complaining Ventura county 'settlers' settled on their places in Ventura county and (naturally against the wishes of the ranch owners, but because of the injunction and without any authority on their part to prevent them from so doing) made use of the adjudged public highway through the ranch.

742 Of course, upon the granting by Judge Oster of the motion for a new trial as to the western end of the ranch, their right to use the so-called public road from La Chusa Canyon to the Ventura line ceased, but nevertheless, they continued to use it without any serious objection by the ranch owners until the ranch owners built certain new expensive private roads, erecting locked gates across them. Then, after the decreed 'public road' had, by reason of neglect to
743 keep it up, become practically impassable, particularly at certain seasons of the year, these Ventura county 'settlers,' aided by one of them named Fitzpatrick, proceeded to break through the private gates on these private roads of the ranch owners and to forcibly and unlawfully make use of them. This, in brief, resulted in an injunction suit against Fitzpatrick and his co-settlers, which they never even attempted to defend and in which an injunction was issued
744 and is still in force.

The ranch owners, in view of this untoward and unlawful action of these Ventura ranch owners, then took proper and vigorous steps to prevent the use by them of any of the ranch roads not covered by the injunction in the Oster case.

The result of this was an attempt on the part of your board and of Mr. Joyner, who superintends roads under your authority, to compel the

745 opening and use of that portion of the road lying between La Chusa Canyon and the Ventura county line and covered by the order of Judge Oster granting the motion for a new trial.

The result of this was an action for an injunction brought by the ranch owners against Mr. Joyner and your board and certain other county officers to restrain this trespass; and this action, together with the portion of the case of People vs. Rindge affecting the same section of
746 road, was tried before Judge Pat R. Parker, of Mono county, sitting in Extra Session of our Superior Court, the trial lasting more than forty days and involving an enormous expenditure of money both by the county (which was assisted by special counsel employed by you) and by us.

Subsequent to the trial of these two branches of this long, drawn-out and expensive litigation, the Supreme Court of the state of California
747 reversed Judge Oster's order, denying the new trial as to that portion of the Malibu Road lying between Las Flores and La Chusa, and following upon the heels of that, Judge Parker recently decided the western portion of the case of People vs. Rindge and the case of Rindge vs. Joyner in favor of the ranch owners.

In other words, after many years of long, tedious and enormously expensive litigation, the owners of the Malibu Ranch have been com-

748 pletely vindicated by the courts at every point in their effort to maintain the private character of their roads across the ranch, a large portion of which roads were constructed by the ranch owners at a very heavy expense running into many, many thousands of dollars.

Under these circumstances, it seems to us that your board should most seriously hesitate before putting the county to any further expense in a matter which has proven so disastrously expen-
749 sive already and which so far has proven to be without any merit insofar as the county, state and the United States government are concerned.

We may add that as to these Ventura county 'settlers' and as to the 'settlers,' few as they are, to the north of the ranch, the evidence in the Federal Court shows, and the fact is, that while it would doubtless be more convenient for them
750 to make use of the roads through the ranch in order to get to Santa Monica and Ocean Park for the purchase of supplies, they nevertheless can, with added difficulty it is true, reach supply centers to the north and west, and are not, therefore, under any absolute necessity of using the roads through our ranch.

We may add also that the pernicious activity of the Ocean Park and Santa Monica Chamber of Commerce is easily explainable on the ground that they desire to attract even the small trade

751 that might come to their community from these straggling mountain settlers.

Finally, the proposed road, if the county should undertake to go to the enormous expense of attempting to open it would almost entirely contribute to the benefit of persons residing beyong the Los Angeles line in Ventura county, and would scarcely afford a modicum of benefit to any resident of Los Angeles county. Should the petition in question be presented to you and
752 you should feel that any further consideration of it is necessary, we most respectfully request that you permit us a hearing before taking any definite action upon it.

Yours very truly,
(Signed) MAY K. RINDGE,
RINDGE CO.
By M. K. RINDGE, *Pres.*"

Mr. Burnell: I would like to have that docu-
753 ment remain in the room until we are through. Now, so far as the matter accompanying it the pamphlet, so far as the reading of that is concerned, we waive that, and we ask leave that it be filed as a copy.

This document was and is as follows:

754 Malibu Rancho Roads Proven to Be Private Property.

To the Interested Reader.

After ten years of litigation of roads through Malibu Rancho, the Rindge Company has won every one of the cases brought against it by petty politicians of Los Angeles, who have been able to keep these cases alive, and thus keep the Malibu Rancho property open and subject to
755 depredations of professed settlers many of whom in reality are caretakers for the owners of mountain lands that have been taken up since the litigation was started, much of it through the Timber and Stone Act at $2.50 per acre.

These suits have cost the taxpayers in the neighborhood of $200,000.00, so we are told, which amount of money would have paved roads for them to the State Highway, only a short distance away.

756 Our rancho, which grows large crops of barley, barley hay, oats, oat hay, alfalfa and diversified crops, and raises many head of horses, cattle, sheep and hogs, has suffered greatly from fires, and other losses affecting all of these products, by people passing through, and so that you may understand the true situation, we are sending you a copy of the two most prominent decisions, which will give you a very good history of the case.

757 Trusting you will find them instructive as well as interesting, we remain,

Respectfully,

RINDGE COMPANY,

By M. K. Rindge, *President.*

In the District Court of the United States for the Southern District of California, Southern Division.

United States of America, complainants, vs.
758 May K. Rindge, as executrix of the last will and testament of Frederick H. Rindge, deceased. May K. Rindge, individually. Newell Dyke Darlington, The Pacific Mutual Life Insurance Company, of California, a corporation. Hueneme Malibu, and Port Los Angeles Railway, a corporation, defendants. In Equity.

A. I. McCormick, U. S. Attorney, Los Angeles, California.

H. L. Dunnigan, Special Assistant U. S. At-
759 torney, Los Angeles, California, Solicitors for Complainant.

James A. Anderson, Los Angeles, California.

E. E. Millikin, Los Angeles, California, Solicitors for Defendants.

R. S. Bean, District Judge:

This is a suit brought by the government against May K. Rindge, et al., to compel the abatement and removal of certain gates and fences erected and maintained by Mrs. Rindge

760 on her own premises, on the ground that the same are obstructions to public highways and way of necessity and unlawful enclosure of public lands of the complainant, in violation of the Act of Congress of February 25, 1885 (23 St. at L. 321).

The case as made by the record is this: At the time of the cession of California to the United States by Mexico, there was a tract of land of one hundred thousand acres or more in
761 what is now Los Angeles county, lying along the coast from the Rancho Santa Monica to Point Mugu, a distance of about thirty-five miles. It was from five to ten miles wide, and extended north to and beyond the Calabasas road, then and now one of the main highways from Los Angeles to points north. It was bounded on the south by the Pacific ocean, and on the north, east and west by land previously
762 granted by the King of Spain to private individuals. A range of mountains known as the Santa Monica mountains extends through the tract east and west, three or four miles back from and approximately parallel with the coast, and between it and the Calabasas road.

In 1852 the successor in interest of one Tapias applied to the board of commissioners to ascertain and settle private land claims in the state of California (as provided by the Act of Congress of March 3, 1851, 9 Stat. 631), for an

order confirming his title to a portion of the land referred to, alleging it to have been granted to Tapia by the King of Spain in 1804. Thereafter such proceedings were had that on October 24, 1864, a decree was regularly made and entered by the United States Court for the southern district of California confirming the petitioner's title to the land "known by the name of Topanga, Malibu ——— Sequit, extending from a place named 'Topanga,' the dividing line between these lands and the Rancho of 'Santa Monica' on the southeast along the Pacific to a point called Mogu on the northwest and bounded on the northeast by a ledge of rocks on the top of and extending the whole length of a range of mountains; and adjoining the lines of the Ranchos of 'Las Virgeues,' 'Triunfo,' 'Santa Ysabel' and 'Conyo.' Said confirmation being hereby made to the extent of three square leagues within said mentioned boundaries." There were more than ten square leagues within the exterior boundaries of the larger tract described in the decree. The portion thereof, the title to which was confirmed to the petitioner, was surveyed by the government of the United States in 1871, and in August, 1872, patent was regularly and duly issued therefor. It is known and referred to in the record as the Malibu Ranch, and lies along the coast for about sixteen miles west from Las Flores Canyon, a point

766 some three or four miles west of Topanga, and is from one-and-a-half to two-and-a-half miles wide and contains about thirteen thousand acres.

The remainder of the tract was surveyed as public lands in 1896 or 1897. A small portion thereof has been patented to settlers, but the larger area still remains a part of the public domain. The Malibu Ranch lies along the foot of the mountains referred to in the decree, two or three miles south of the summit. Extending
767 from the summit of the mountains through the public lands and across the ranch to the ocean are numerous spurs or ridges, in the buttom of the canyons between, which spurs are limited acres of agricultural land. The sides of the canyons back of the r[illegible] are in many places so steep and rugged as practically to prevent access north and south from one to the other. The land north of the mountains and between that and the Calabasas road is more or less broken
768 with small valleys in the canyons.

Prior to the acts complained of in this suit the Malibu Ranch was for the most part wild, unenclosed land, used principally for grazing stock. From time immemorial there has been more or less travel onto the ranch from the east by persons on horseback, with wagons and vehicles, and an occasional traveler across the ranch to and from Ventura and points north. The travel was on the true ocean beach except at certain

769 points where it was not possible to use the beach, and then over the hard ground adjoining. About 1884, and while the ranch was unenclosed, persons commenced to enter upon the unsurveyed public lands in the canyons back of it and make settlements, traveling along the beach from the east to the particular canyon in which they settled, and then over and across the ranch on roads or ways built by them. There has always been considerable controversy between the set-
770 tlers and others and the owners of the ranch as to the right of the former to use the roads, or to travel over or across the ranch.

About 1905, or shortly prior thereto, the owner of the ranch, at considerable expense, constructed a good substantial private wagon road and commenced the construction of a railroad along the front of the ranch near the beach. These improvements naturally attracted atten-
771 tion, and the publicity given thereto caused a large number of persons to visit and examine the public lands back of the ranch with a view of settlement thereon, traveling over the ranch, to the annoyance and inconvenience of the owner. To protect her property from injury by travelers and from fires set by them, the owner built in 1907, and now maintains, a fence a few hundred yards long across the beach road, where the mountains come down close to the ocean at a point three or four miles from the east end of

772 the ranch, which with other fences and natural barriers on the west and north, practically encloses the ranch, and she has also maintained fences and closed gates across the beach road at other points to the west.

This suit was brought by the government for a decree enjoining and restraining the defendant from maintaining such fences or obstruction on the ground: (1) That the beach road and the roads used by the settlers up the various canyons
773 are public highways and necessary for access to the lands of the complainant. (2) That at the time patent was issued for the ranch there was reserved by implication to the government and its grantees a right of way over the land so patented to the public land back thereof, because there was and is no other practicable way to reach such land from a public highway. And (3) That the construction and maintenance of
774 the fences and gateways in question, although on the defendant's own land, constitute an unlawful enclosure of public lands within the meaning of the Act of Congress of February 25, 1885.

The record is exceedingly voluminous, consisting of many thousand pages of testimony and numerous exhibits showing the nature, extent and character of the travel over and through the ranch, the topography of the country back of the ranch, its accessibility from a highway on the north and across the mountain

775 range, the cost and expense of building roads over the government land and the like. The prodigious industry of counsel in abstracting and classifying the testimony and their able and exhaustive arguments have relieved the court of a vast amount of labor, and I take this opportunity to express my appreciation thereof. Without the aid thus afforded an intelligent understanding of the case would have been almost hopeless.

776 A great bulk of the testimony and a considerable portion of the argument were directed to the issue concerning the existence of a highway along the front of the ranch and next to the ocean but, as I view the matter, it is unnecessary to consider that question. The evidence signally fails to show that the roads leading from the beach across the ranch are public highways, and if they are not the government has no concern with the controversy as to the existence of such

777 a way along the beach since it has no access thereto by a public way. All the roads across the ranch were built and maintained by the settlers, either with the express or implied consent of the land owner and were nothing more than mere private ways. There are twelve such roads known in the record as the Las Flores Canyon road, the Bieule road, the Carbon Canyon road, the Malibu Canyon road, the Puerco Canyon road, the Corral Canyon road, the Sosto Canyon road, the Latigo or Escondido Canyon road, the

778 Suma Canyon road, the Trancas Canyon road, the Encinal Canyon or Decker road, and the Nicholas Canyon road. None of these roads were established by public authority nor has any public money ever been used in their construction or maintenance or repair, and they have never been recognized as public highways by the public authorities, and have never been fenced or in any way separated from the surrounding territory.

779 The Las Flores Canyon road is along the east end of the ranch and but a small portion of it, if any, is on the ranch. It has been traveled since 1889 by two or three settlers and by hunters.

The Bieule and Carbon Canyon roads were built in 1890 and 1898, respectively, by express permission of the owners of the ranch a[illegible] has been very little travel over either of

780 The Malibu Canyon road was built so[illegible]ame after 1885 and extends up the canyon about half a mile beyond the ranch line and ends on private land. The canyon is steep, has rugged sides and there is no public land, as I understand the record, accessible from this road or any possible extension thereof. There has been no particular travel over [illegible]d except by a few settlers in the canyon and by hunters and trappers.

The Puerco Canyon road was built by Carey

781 and Daman in 1897 or 1898, and was used by them.

The Sosto Canyon road was built by Swinney about 1894 with the permission of the owners of the ranch.

The Latigo or Escondido Canyon road was built by Reeves and Swinney after their settlement in 1890, and a part of it by permission of the owners of the ranch.

The Suma Canyon road was built by Bandy
782 after his settlement in 1894, and used by him.

The Trancas Canyon road was built by Haworth about 1885 in order to reach his home.

Decker settled in Encinal Canyon in 1885 and has continued to reside there ever since. The road from the beach across the Malibu Ranch was built by him in 1885 or 1886, and has since been extended to the public lands back of his place and over and across the mountains inter-
783 secting the Calabasas road on the north. There are several settlers along this road near the summit of the mountains who sometimes use the road to the south across the Malibu Ranch but more frequently the road to the north.

The Nicholas Canyon road was built by Swinney and Nicholson for their own use some time after 1885.

Each of these roads was therefore built after the year 1883 by settlers to reach their claims, and was used for that purpose and by occasional

784 hunters and pleasure seekers. The roads were unquestionably private ways in the first instance, and it does not appear that the land owner ever consented to their change to public highways, nor is there any element of estoppel shown to deprive her of her rights as owner of the fee. The mere fact that the roads were used by persons not settlers without objection from the land owner will not make them public highways. (Elliott on Roads and Streets, Sec. 5.) The act
785 of the legislature of California of February 28, 1883, which has since been in force, and is now sections 2618 and 2621 of the Political Code, declares:

"In all counties of this state public highways are roads, streets, alleys, lanes, courts, places, trails and bridges laid out or erected as such by the public, or if laid out or erected by others, dedicated or abandoned to the public, or made
786 such in actions for the partition of real property." (Section 2618.)

"And no road or traveled way used by one or more persons over another's land shall hereafter become a public road or byway by use or until so declared by the board of supervisors, or by dedication by the owner of the land affected." (Section 2621.)

Under these statutory provisions a road over another's land does not become a public highway by mere use alone. Unless it is established by

787 public authority there must be an abandonment or dedication to the public by the land owner. The abandonment or dedication need not be by express grant nor evidenced by writing, nor indeed be in form of words, oral or written, but may be inferred from other circumstances. It may be established in any conceivable way by which the intention of the owner to dedicate or abandon the land to the public for a public way can be manifested (Elliott on Roads and Streets,
788 Sec. 137. People vs. Davidson, 179 Cal. 166. Suisman vs. San Luis Obispo, 126 Cal. 536. Plummer vs. Sheldon, 94 Cal. 533) and may be presumed from adverse user by the public under a claim of right with the knowledge of the owner for a period of time corresponding to that fixed for conferring title by prescription. (People vs. Myring, 144 Cal. 351. Same case, 77 Pac. 975. Schwerdtle vs. Placer Co., 41 Pac. 448.
789 Hartley vs. Vermillion, 74 Pac. 987.) But there must be evidence showing an intention to abandon or dedicate the land to the use of the public, or proven facts from which such intention can be fairly deducted, and unless the intention expressly appears or can be inferred from acts done or omitted, there is no proof of dedication abandonment. (Elliott on Roads and Streets, Sec. 138-173. Silva vs. Spangler, 43 Pac. 617. Irvine vs. Dixon, 9 How. 10. Coburn vs. San

790 Mateo Co., 75 Fed. 520.) The question is always one of fact.

Now, the occasional and irregular travel across the ranch by the land claimants and hunters, the principal users of the ways, without more, is not evidence either of the abandonment or dedication of the land to the public use by the owner, nor does it constitute the adverse use necessary to establish a presumption of such dedication. As the cross roads are not high-
791 ways, and there is no access by such a way across the ranch from the public domain to the beach road, the government has no interest in the question whether the latter is a public highway or not. The establishment and maintenance of highways, as such, over privately owned lands, belongs primarily to the state authorities, and not to the government of the United States. The character of the beach road is now in litigation in the state courts and should be deter-
792 mined there. This suit is maintained by the government as a landed proprietor, and on this branch of the case it is entitled to no greater relief than if it had been brought by a private owner claiming that a public highway leading to his land was unlawfully obstructed. Certainly a private owner of land back of the Malibu Ranch would have no standing in a court of equity to enjoin the obstruction of the beach road, unless he could show access to such road

793 over some lawful way. The government has no other or greater rights.

The alleged ways of necessity: The defendants claim that ways of necessity, as such, were unknown to the Spanish law, and since they derive title from the King of Spain, their property cannot be so burdened. The complainant challenges the soundness of this position and argues that in any event the grantee from the King of Spain and the complainant were ten-
794 ants in common of the larger area described in the decree of confirmation of August, 1864, and the subsequent survey and patenting of the ranch was in effect either a grant from the government of the United States or a partition of the property, and hence the common law doctrine of ways of necessity is applicable thereto.

I shall not stop to consider these questions, interesting as they are, but shall assume for the
795 purpose of the decision that the defendant holds title as grantee of the government of the United States, the view most favorable to the complainant.

In considering the government's contention, it is important to get a clear view of its position and the consequence thereof. In effect it is, that at the time the patent was issued there was reserved by implication to it and its subsequent grantees, however numerous, rights of way to be subsequently located over and across the

796 ranch to reach the several portions of the government land, although there is no such provision in the patent, and there was no law in force at the time reserving such a right. The claim is that there was so reserved a way along the beach practically the entire length of the ranch, and also numerous ways across the ranch and up the several canyons. These roads will, if decreed, be in effect public highways, although ways of necessity are essentially private ways.
797 The government is not asserting a right of passage over the ranch for governmental purposes alone, or as a mere land owner, but seeks to have ways established for the use and benefit of present and subsequent settlers on the public domain. In other words, it is asserting rights of way for the use of such of the public as may have occasion to visit the public domain for settlement, pleasure, business or any other lawful purpose.
798 The logical result of this contention is that a way is reserved by implication for the use of such persons over all land granted by the government to reach the remaining subdivisions when there is no other reasonable or convenient means of access, notwithstanding there is no such reservation in the grant, and there is no public law so providing. A doctrine so contrary to the general theory of the rights acquired by patentees of public lands and guaranteed to private owners by the Constitution, challenges at-

799 tention. Its effect is strikingly apparent in the case at bar. The result of the government's position, if sustained, will be to divide the Malibu Ranch by what are in effect public highways into ten or twelve different tracts, thus materially impairing its value and usefulness to the owner, and that without compensation. It is, in my judgment, very doubtful whether the doctrine of implied ways of necessity has any application to grants from the general govern-
800 ment, under the public land laws (Pearne vs. Coke, Vol. 90 Tenn. 619. Bully Hill C. M. & S. Co. vs. Bruson, 87 Pac. 237). If it exists at all it can be invoked against the government and its grantees as well as in their favor. Hence every grantee of a portion of the public domain from the time the land laws were extended over the same, and those succeeding to his title would have an implied right of way over the surround-
801 ing and adjacent public lands, and a junior grant thereof if necessary to reach his own land, and a junior grantee and his successors in interest would have such a way over a prior grant under similar circumstances, simply because they derive title from a common source. The public domain is disposed of under general laws and the rights conferred and reserved are defined by such laws, and rules and regulations made in pursuance thereof. If the sale or conveyance of one portion of such domain prevents access

802 to another, it would seem to be a contingency which the government was bound to contemplate in making the conveyance. By public statute Congress has granted rights of way for the construction of highways over public lands not reserved for public use. (Act of Congress, July 20, 1866, 14 Stat. at L. 253.) Beyond this and the full protection of the title which it confers, it would seem that the government owes no duty or obligation, and reserves to itself or its
803 subsequent grantees no interest in the land granted except such as may appear on the face of the grant, or the law under which it was made, or be declared by a general statute in force at the time the interest of the grantee was acquired. But assuming that the doctrine of ways of necessity can be invoked by the government for the benefit of its grantees, as against a prior grantee, is there any ground for its application here? What is commonly called
804 a right of way from necessity arises when the owner of a tract of land conveys a portion thereof to another and there is no access from a public highway to the part so conveyed except over the remaining lands of the grantor or a stranger, or when the owner sells a portion of his land and the part remaining is inaccessible except over the land sold or that of a stranger. It is not strictly accurate to say one man has a right of way of necessity over the land of another.

805 The necessity of one man, however great, will not of itself give him an interest in the property of another or justify entry on another's land. The fact that there is no way to the land sold except over the remaining land of the grantor, or that the remaining land of the grantor is not accessible except over the land granted by him is only a circumstance resorted to for the purpose of ascertaining the intention of the parties to the grant, and to raise an implied grant or
806 reservation of a way, because where a thing is granted or reserved the law implies a reservation or grant of that which is necessary to the enjoyment of the thing granted or reserved. (Goddard on Easements, P. 262. Bishop on Non-Contract Rights, Ed. 1889, Sec. 872. Jones on Easements, Sec. 154.) This rule is usually invoked in favor of a grantee, but has been held to apply where one sells land surrounding
807 other lands belonging to him, thus cutting off access to his remaining lands except over the granted premises. It is said that by implication he reserves a way over the land granted, even though there is no such provision in his deed and he conveys with covenant of warranty. (2nd Washburn on Real Property, 282.) But in such case the rule of strict necessity applies, because the grantor is claiming something in derogation of the deed which he has given, and the title which he has conveyed, and if he in-

808 tends to reserve any greater right over the land granted it is his duty to expressly so provide in the grant. Neither inconvenience or even great inconvenience is enough. There is no implied reservation of a way by implication in favor of a grantor unless in case of strict necessity and when he has no other practical means of approach to his land. (Washburn on Easements, 2nd Ed., 219. Jones on Easements, 155-318. 14
809 Cyc. 1171-6.) As said by the Supreme Court of California in Kripp vs. Curtis (71 Cal. 62, 11 Pac. 879): "The right of way from necessity must be in fact what the term naturally imports and cannot exist except in cases of strict necessity. It will not exist where a man can get to his property through his own land. That the way over his own land is too steep or too narrow or that other and like difficulties exist does not alter the case." A right of way over another's
810 land is, in its final analysis, an interest therein and when sought on behalf of a grantor contrary to his deed it should never be implied except in case of strict or extreme necessity. That it will be more convenient or desirable than some other way is not sufficient. The fact that there is a bluff or mountain across the grantor's land which is difficult to pass, or that a way through his land is obstructed or will be expensive to construct, or is steep or hilly, or that the public way to which he has access is in such a bad

811 condition that it is impossible to haul more than small loads over it, and the like, is no reason for implying a grant or reservation of another way. (Goddard on Easements, 270. Gains vs. Lencord, 102 Am. Rep. 109. 6 La. Annual, 118. McDonald vs. Lindall, 3 Rawls, 492. Dee vs. King, 50 At. 1109. Same case, 73 Vt. 375. Nichols vs. Luce, 24 Pick. 102.) Implication of grants or reservations of ways of necessity are
812 looked upon with jealousy and construed with strictness because they are contrary to the deed of conveyance. It is only the necessity of the case that will carry such a way.

Now, applying these principles to the facts and the result, in my judgment, is manifest. At the time the patent was issued for the Malibu Ranch, access to the ranch and to the canyons leading through it to the public lands, from the coast, was most difficult. It was impossible to
813 do so from the west with any kind of a vehicle, and it was practically impossible to get within eight or ten miles of the ranch from the east with a wagon on any kind of a road. The way from the east was along the beach through dry sand, over rocky points and was beset with so many difficulties that it was rarely used. On the other hand, the public land north of the ranch was accessible at that time from the Calabasas road, and it would seem, as stated by Mr. Justice Sloss in a similar case that "this

814 circumstance alone is fatal to the existence of a way by necessity." (Corea vs. Higuera, 153 Cal. 451. 95 Pac. 882.) It is true that in order to reach the public land south of the mountain, and west of Malibu Canyon from the Calabasas road it is necessary to cross the mountains, but they are not impassable barriers. The evidence shows that roads can be constructed across them and it is doubtful whether, if the con-
815 ditions were now the same as when patent issued, it would cost more to build such roads than to construct ways to the public lands from the east. One road has already been constructed across the mountains connecting with the Ensinal Canyon or Decker road, and is now being used by the settlers. Others can be built to serve the land between this road and the Malibu Canyon. The land east of Malibu Canyon is accessible by an extension of the Las Flores
816 Canyon road. The fact that these roads would be expensive to construct and would be steep and difficult, and not as convenient or desirable as ways from the east or south does not alter the case. They will afford access to the government land, and therefore it cannot be said that there is no way thereto other than across the ranch.

There is a vast amount of testimony in the record as to estimated cost of building roads from the north to reach the government land

817 south of the mountains. The witnesses differ widely as is often the case with experts. I do not think it is necessary to examine the evidence in detail. All agree that such roads can be built. The evidence for the government tends to show that it will cost from seventy-five to one hundred thousand dollars to build highways of not to exceed a maximum grade of twelve per cent, and what are designated as "hap-hazard roads" can be built for about two-fifths of that
818 sum. Experts of apparenty equal intelligence and experience testify for the defendant that good substantial roads such as are common in similar mountainous regions, and which will serve the purpose of settlement, can be constructed at a comparatively small outlay. But taking the estimates of the government's witnesses as correct, I am not prepared to say that the cost of building the roads would be so dis-
819 proportionate to the value of the land as to be prohibitive. The question is not to be determined by comparing the value of any particular subdivision with the cost of a road to it, but the relative value of the entire tract to be served with the cost of building roads to reach it. It will no doubt cost more to build roads under present conditions from the north than from the south, but neither that fact nor the fact that it will be more convenient for settlers south of the mountains to approach their homes from the

820 ranch side, is any reason why the owners of the ranch should be compelled to suffer the loss and inconvenience of having numerous public highways across their property without compensation therefore.

There is another reason why, in my judgment, the government's position is unsound. The necessity from which the law implies a grant of reservation of a way must exist at the time of
821 the grant, and as to the whole tract conveyed or reserved. Neither a grantee nor a grantor can subsequently subdivide his land and sell off a portion in such a manner as to create a way of necessity in favor of his grantees over the parts previously granted (Lankin vs. Terwilliger, 22 Ore. 97. Jones on Easements, P. 304) unless perhaps the way rests in grant or the easement is an apparent and continuous one, existing and in use at the time of the conveyance. (3rd
822 Washburn on Real Property, P. 284.)

If the land described in the decree of August, 1864, had belonged to a private individual and he had sold the portion now owned by the defendants and conveyed the same by absolute deed without reservation, it would hardly be contended that he could subsequently subdivide the remaining area into 80 or 160-acre tracts and by conveying the same to sundry persons invest in each a right of way over the portion

first conveyed, and it is not believed the government has any other or greater rights.

What has already been said would seem to dispose of the question that the fences complained of should be abated because in violation of the Act of Congress making it unlawful to enclose public lands since, if, as I conclude, the public lands can be reached without crossing the ranch, the fences in question do not constitute an enclosure thereof, or an obstruction to an entry thereon. But, however that may be, the fences are on defendant's land a considerable distance from the exterior boundaries thereof. The one first encountered, in journeying to the public lands through the ranch, is three or four miles from the east end of the ranch, and cannot be approached without traveling for that distance over defendant's property, unless it is across a public highway, a question not important to the point now under consideration. After passing the fence it is necessary to travel several miles over defendant's land before reaching the public domain. The other fences are across the beach road west of the one just referred to. The abatement of the fences therefore would not permit access to the public domain without trespassing on privately owned land, and I am unable to comprehend how such structures can be held to be in violation of the Act of Congress. The Fence Law, as its title

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826 implies, was intended to prevent unlawful occupancy of public lands. To that end it makes the enclosure of such land illegal (Sec. 1), and forbids obstruction to or prevention of the entry thereon, or free passage or transit over or through the same by force, threats, intimidation or by unlawful fences or enclosures (Sec. 3). But it was not intended to interfere with the use and enjoyment of private property unless such use is a mere subterfuge for enclosing or
827 preventing access to the public domain. I do not understand that Congress intended to interfere with the use of privately owned lands or the erection of such fences or structures thereon as are reasonably necessary for the full and free enjoyment thereof, or to permit or sanction trespass thereon, or confer or recognize a right of passage over the same. It was not concerned with the initiation or creation of means of ac-
828 cess to public lands, but with the matter of keeping the boundaries thereof open, so that all persons who could lawfully reach the same, might enter. If it had intended or contemplated, as now claimed for the government, the use of a way over privately owned lands to reach the public domain, it would no doubt have so indicated, and probably made some provision by which such way could be fixed and located.

It is true that if one builds a fence on his own land which does not inclose the same, but

829 the natural effect of which is to enclose public lands, either separately or together with his own, he will be held to have violated the statute, regardless of the actual intent with which the fence was built or maintained, because every person is presumed to intend the natural and probable consequence of his own act. (Homer vs. U. S. 175 Fed. 741. Golconda Cattle Co. vs. U. S., 201 Fed. 282.) But I know of no decision holding that a fence built on one's own land in
830 good faith for the sole purpose of enabling the owner to use and occupy his property, and not as a guise for enclosing public lands, to be an unlawful structure, although it may incidentally interfere with access to the public domain, for, as said by Mr. Justice Brown in Canfield vs. U. S. (167 U. S. 528): "So long as the individual proprietor confines his enclosure to his own land, the government has no right to com-
831 plain, since he is entitled to the complete and exclusive enjoyment of it, regardless of any detriment to his neighbor." It is only when "under the guise of enclosing his own land, he builds a fence useless for that purpose, and which can only have been intended to enclose the lands of the government" that he comes within the statute and is guilty of an unwarrantable appropriation of that which belongs to the public at large. The same doctrine is declared by the Court of Appeals of this circuit in Potts vs. U. S., 114 Fed. 52; Hanley vs. U. S. 186 Fed. 711; Billis

832 vs. U. S., 190 Fed. 530. In the Potts case it is said: "The act of a person in fencing or enclosing his own land is lawful. It is also lawful for a person to fence and enclose his own land up to a point where it connects immediately with the fence or enclosure of adjoining land owned by another. It is only when, under the guise of enclosing his own land, a person builds a fence for the purpose and with the intention of
833 enclosing the public lands of the government that the fence or enclosure becomes unlawful." And in the Hanley case the following instruction given by the trial court was approved: "A person has a right, under the law to erect fences wholly upon his own land, and to maintain them if he so desires, and if incidentally such fences may obstruct or impede the ingress or egress of stock ranging upon the public lands, or the free passage of persons upon or over such lands, no
834 one can complain, because a man has a right to do what he pleases with his own, so long as he does no wilful injury to another." It is true the cases referred to were criminal but the court was construing the Fence Law, and distinguishing a lawful from an unlawful enclosure, and I can conceive of no difference in this regard between a civil and a criminal case. A fence cannot be deemed a lawful structure in a civil proceeding, *an* an unlawful one in a criminal case, or vice versa.

835 I have not overlooked the fact that there are decisions cited by the complainant, the logical effects of which would seem to support the government's contention but, as said by Mr. Justice Moody, in Telephone Co. vs. Los Angeles (211 U. S. 274): "No case, unless it is identical in its facts, can serve as a controlling precedent for another."

The fences in question, as I understand the
836 record, were and are reasonable and proper means of protecting the defendant's land from trespass, and useful for the proper enjoyment thereof. They were built by her in good faith with no intention of appropriating or enclosing public lands or preventing lawful access thereto. In connection with fences and natural barriers on the west and north, they amount to a substantial enclosure of privately owned lands, and the crux of the question then is whether the de-
837 fendant can use reasonable, proper and appropriate means to enclose her own property without violating the federal statutes. In my judgment she can.

The complaint will be dismissed.

Dept. Two

L. A. No. 3752

The People of the State of California, Plaintiff and Respondent, vs. May K. Rindge, et al., Defendants and Appellants.

838 This action was brought to abate alleged nuisances maintained by defendants upon and across a public highway in the county of Los Angeles. The nuisances were gates and fences. The purpose of the litigation is to obtain a decree declaring that a public highway exists through the Malibu Ranch along the shore of the Pacific ocean. The Malibu Ranch is about twenty-two miles long and contains about thirteen thousand acres. Thus it is quite narrow,
839 varying in width from one mile and a half to two miles and a half. Its length is easterly and westerly. Its southern front is bounded and washed by the waters of the Pacific ocean. The inland boundary line extends along the southerly slope of a rugged, inhospitable mountain chain, cut by deep ravines and canyons. At the foot of these mountains is a stretch of country narrow and comparatively level and known as
840 mesa lands. The "shore of the Pacific," along which it is declared this highway extends is a shore characteristic of many hundreds of miles of California's littoral. Nearest to the ocean is a gradually sloping sandy beach between the lines or high and low tide. At low tide this beach is uncovered and the sand wet and compacted affords a firm passage way for footmen and vehicles. Above this is a stretch of loose, shifting sand, washed and blown above the line of ordinary high tide. This sand is dry and

841 passage over it, though possible, is difficult. The footman sinks to his ankles, the horse to his fetlock, the vehicle which he is dragging half way or more to the hubs. Beyond this loose sand is a bluff varying in height from thirty, sixty to one hundred feet. Eroded from this bluff and lying at the foot of it is the talus. This bluff marks the seaward end of the comparatively level mesa lands of which we have spoken. These mesa lands in turn are chan-
842 neled by ravines or arroyos, in winter carrying the mountain waters down the gulches to the ocean. In summer they are dry. Their banks usually are quite precipitous. The beach, of course, is likewise pierced in places by these short mountain streams, although in summer when these streams are not flowing the ocean frequently restores the sand washed away by the winter torrents. Still further the beach is
843 broken by small promontories and rocky headlands jutting out into the ocean and by rocky outcrops here and there along its line. As is well known to anyone at all conversant with the primitive life of California, these beaches afforded the customary routes of travel up and down the coast. They were smooth and level, as compared with the mesa lands which were cut by numerous gullies, difficult of descent and equally difficult of ascent. Thus travel sought the beach and followed along the line of the

hard sand uncovered by the ebbing tide. As a promontory was approached the traveler was compelled to leave the beach, climb to the mesa uplands, cross the promontory, descending to the beach on the farther side. Where the winter rains converted the arroyos into torrential streams progress was impossible. When the rising tide covered the hard beach the traveler was compelled to make his laborious way through the soft sands above, or, as was usually the practice, he interrupted his journey and remained where he was until the tide had again ebbed. Little or no construction work was ever done upon these roads if roads they could be called. The traveler, usually on horseback, when it became necessary to leave the beach, sought the least precipitous place in the bluffs, up which he rode or led his horse. Where this was impossible, the earth bank of the bluff was graded down.

Such are the general characteristics of many such ancient shoreways along the Pacific ocean; such were the general characteristics of this ancient way. In those early days the principal towns or pueblos to the north and west of that of Los Angeles were San Buenaventura in Ventura county, and Santa Barbara in the county bearing the same name. Both of these counties, like the county of Los Angeles, are coast counties. There were several routes of travel be-

847 tween Los Angeles and these northerly pueblos through the mountain passes, in addition to the shore route just described. This shore route, beginning at a settlement on the ocean near the mouth of Santa Monica Canyon, ran about five miles through another grant, Boca de Santa Monica; then entered upon the Malibu grant, ran along its coast line and a mile or two beyond it to a gulch known as Yerba Buena or Little
848 Sycamore Canyon, when it struck inland up this gulch and over the mountains and so to the town in Ventura county. Travel over the whole of this route was possible only to the footman or to the horseman. Wheeled vehicles could not be dragged over it, and indeed there were in those early days but few wheeled vehicles—carretas—clumsy carts with solid wooden wheels, drawn by oxen.

The Malibu Ranch was a Spanish grant, pat-
849 ent to which was issued to Matthew Keller in August, 1872. It was, as the foregoing description of its character at once makes plain, a stock range for the pasturing of sheep or cattle, and for this purpose it was used. Some of the surrounding lands were also Spanish or Mexican grants, but to the north of the Malibu was an unsurveyed strip of government land. In some of the upper reaches of the streams leading through the Malibu were small tracts of government land fitted for agriculture and these were

taken possession of by settlers. In the streams were trout; in the valleys quail, and in the hills deer, and the country was therefore attractive to the fisherman and hunter. All of these people entering the ranch traveled, as it was necessary for them to travel, along the shoreway above described, until, reaching the gulch or canyon which they desired to ascend, they left the beach and struck inland. At the time when Matthew Keller received his patent and for sometime thereafter the only persons actually living on the Malibu Ranch were Matthew Keller and his family, with his overseer and vaqueros looking after his stock. Their home was in the Malibu Canyon, off from the line of the beach road, which they themselves used in reaching their home. The Malibu Canyon was about two miles westerly from the easterly boundary of the ranch. Further to the westward and about three miles from the western boundary of the ranch is Lechuza Canyon. In this canyon lived the Tapias family in their adobe home. The Tapias were Spanish. They claimed ownership to a part of the Malibu Ranch, and were there living under their assertion of right. Neither they nor their visitors were apparently interferred with by Matthew Keller. From Lechuza Canyon eastward to Santa Monica it was possible to drag a carreta and it had been done from time to time by the Tapias. They left the ranch

853 in 1876. Nor did Matthew Keller's successors interfere with the settlers who used the beach road until they came to their selected canyons, either in their use of the beach road or of the primitive private trails or rough roads which they constructed to reach their locations. Very few of them made a pretense of residing on their selected lands. Nor did he interfere with the travel along his beach road which sought to traverse the ranch en route to Ventura county.
854 He did, however, interfere with and restrict, the use of the ranch and, to a certain extent, of the road, to fishermen, hunters and campers, and this because in many instances they killed his cattle, in others they made their camps near the springs which the cattle frequented for water and so drove them away, and, finally, they occasioned not infrequent and destructive fires. The entry of the settlers came after Matthew
855 Keller's death in 1881.

We have thus fairly epitomized the conditions existing when in 1875, Matthew Keller filed a petition with the board of supervisors of Los Angeles county, offering to dedicate a public highway over his lands. This offer, upon which great reliance is placed by respondents, demands, therefore, somewhat detailed consideration. In November, 1875, a petition was filed by Matthew Keller, purporting to come from the owners of the lands along the route of the proposed

856 highway, asking the supervisors "to lay out a public road along the beach fronting on said ranchos, being the only possible way said ranchos can be approached. Said projected road runs for the greater part along the beach of the Pacific ocean, but at intervals is found impassable by reason of projecting points and rocks that make said highway impassable at high water. The necessity for such a road for the
857 convenience of public travel will be quite obvious to any one authorized to view the same, as well as the nature of the improvements to be made." By way of description the petition set forth that "from the city of Santa Monica the road is a natural road along the beach for a distance of about six miles—the first obstruction to travel commences at the point of an arched rock, within half a mile of the canyon, called Topango, fronting on the Santa Monica Ranch;
858 the other obstructions to the public travel for wagons are found at intervals only between the aforesaid arched rock and the range line between 17 and 18 West, Township," etc. (this range line runs a little to the west of Malibu Canyon, where was Mr. Keller's home), a distance of about six miles in length—this road will connect the city of Santa Monica with an immense body of agricultural and horticultural lands, partly government land, for a distance of twenty miles along the beach, and to fishing

859 grounds of great value to the community. The probable cost is about $300. This proposed road, as shown by its description, was merely the old beach road which we have described. Viewers were appointed and their report followed. It declared that the road from Santa Monica for a portion of the distance westerly was in good condition. It followed the beach. Certain obstructions were then noted, the necessity in one
860 case of grading from the beach to the mesa lands, in another for blasting out obstructing rock in the lone of the beach proper. Arriving at the Malibu Ranch the viewers declare that there are two places along the beach between the easterly line of the ranch and Malibu Lake (at the mouth of Malibu Canyon) that need improvement "and then the passage along the beach from Santa Monica city will be open to travel for a distance of twenty-five
861 miles, opening thereby a scope of country fit for settlement to the amount of over four thousand acres. We estimated the whole cost of improvement at $650 in all so as to make the road passable in all seasons of the year." The report then recommended the adoption of the petition and the immediate improvement of the road as suggested. The field notes accompanying this report showed, as does the report itself, that the doing of no work was contemplated west of Malibu Lake. The field notes were carried no

862 further than Malibu Lake and concluded, after fixing the easterly line of Malibu Ranch, with "and following the beach to the lake in said Rancho." The bond accompanying the Keller petition and executed by Keller was conditioned on "the opening of a road from Santa Monica to the Rancho Topango Malibu."

There is one conspicuous infirmity in the Keller petition, which impairs its legal effect as an offer of dedication, and that is that his offer
863 contemplates a road from Santa Monica westward to (or through) his ranch. But in fact he did not own the land between the easterly line of his ranch and the town of Santa Monica and had no authority to offer a right of way as and for a public highway over those lands. Nor yet did the owners of those lands ever join in his petition. But let it be assumed that the offer at least was an expression of willingness and de-
864 sire upon the part of Matthew Keller to dedicate a public road or highway across his whole ranch, the question remains, what results from this? It appears from the report of the viewers that they contemplated only the construction of a way from Santa Monica to Malibu Canyon; that this way was to follow the beach, saving in one place where it was necessary to leave it to cross a headland. The projecting rocks in the beach sands were to be blasted out. The talus in some places were to be graded. Something of

865 this work was to be done within the boundaries of the Malibu Ranch to the west of Malibu Canyon. The major portion of it was to be done to the westward of Malibu Ranch. Keller was interested in securing a road on his ranch at least up to Malibu Canyon, where the ranch buildings were situated. But nevertheless it is fairly deducible, and the court originally found, that Keller's offer contemplated a beach highway through his ranch, his petition, it will be noted,
866 setting forth the "obstructions to the public travel for wagons" and declared that such obstructions existed only between Santa Monica and Malibu Lake. At this time, however, there were no settlers whose rights call for consideration. The entries which they later made upon the public domain did not begin until 1882-85, after Keller's death. Nor does it appear that the viewers' report was ever adopted, or that there
867 was ever any formal acceptance of the Keller offer, and the situation thus presented is and can only be that which respondent adopts, namely, that the "offer of dedication contained in the Keller petition was of a road already in existence, used and traveled throughout the entire length of the ranch." Under this view respondent contends that the petition should be regarded rather as one for the improvement of an existing road than as an offer to dedicate a new road.

868 This elimination of the Keller offer from the consideration of the case leaves it for present purposes as though that offer had not been made; that is to say, we are brought back to a contemplation of the question as to whether or not, within the meaning of our law, there was at the time of Keller's offer, or thereafter, a public highway across the Malibu Ranch.

Under the findings which the court originally
869 made and the judgment which it first gave, the existence of such a highway was declared and decreed, the court basing its conclusions, in part at least, upon the fact that this route was a recognized mode of access to the settlements in Ventura and the other northern counties. Upon motion for a new trial the court's views suffered a modification in that it granted the motion as to the existence or non-existence of such a highway from the westerly line of Malibu to Lechuza can-
870 yon, where the Tapias formerly resided. It denied the motion as to the remainder of the asserted highway, and from its order this appeal is taken.

Matthew Keller, as has been said, died in 1881. In 1874 Louis Sentous was on the ranch as foreman and overseer. In the following year he leased the ranch and he and his brother remained as tenants for seventeen years. There were no settlers upon the government land to the north and west of the ranch until after Mat-

871 thew Keller's death. This is conceded. The Tapias had departed, and aside from the occasional traveler who passed along the beach and through the rough trail over the Ventura mountains, travel on the beach road there was none, saving that which pertained to the operations of the ranch and the activities of hunters and fishermen, who were, of course, either licensees or trespassers, with rare visits from peace officers
872 in pursuit of offenders against the law. Moreover, no change was made in the road. No public improvements of any kind were constructed. Whatever may have been done to facilitate access to the ranch houses in Malibu canyon was done by the owner and his tenants. Louis Sentous testifying as to the road conditions west of Malibu Canyon as late as 1879, when he as tenant controlled the ranch, tells that he was assisting in establishing windmills which he had
873 ordered at certain places on the ranch. He says, "from Malibu Canyon and Ramirez Canyon (some six or seven miles westward from Malibu Canyon) we traveled on the beach and at Ramirez Canyon the vaqueros assisted with their lariats in pulling the wagon up the bluff. There was a trail on the mesa which we followed wherever we could but at places it was too steep to follow. A man went ahead on horseback and picked the way for us. This is the first and last trip I ever made with a wagon be-

874 yond Malibu Canyon. Before that time I had never seen a wagon traveling beyond that canyon, but I have seen them since. During those early days I did not see any travelers on the ranch. We gave strict orders not to allow any one to go through there without permission either from Mr. Keller or ourselves. I know the order was carried out. Those orders were given a few years after I rented the ranch upon receiving information that some cattle had been
875 shot by hunters."

In 1882 Guthrie and Harris, coming over the Ventura mountains, located on government land west of the Malibu. In 1884, three years after Matthew Keller's death, they drove a wagon across this beach road from Santa Monica, and thereafter went back and forth on several, and perhaps numerous, occasions. While Keller was alive his tenant Sentous asked him if he might
876 prevent strangers from going onto the ranch, and was told that he could do so. He asked because he had heard something about a county road, but "Keller told me that nothing had been done in the way of an agreement between himself and the county. I told him I was going to stop people passing through and he said that I might do so."

Neither during the period of the Sentous tenancy nor thereafter, when the title of the ranch passed by purchase to Mr. Rindge, whose widow

877 is the defendant in this action, was there any interference (saving as hereinafter noted) with the use of the beach road by the settlers upon the government domain and those who had business with them. After 1884 a number of locations were made upon the government lands. It is within the facts to say that the public had absolutely no use for this beach road, since it led to an impasse in the Ventura mountains, saving as that public was represented by these set-
878 tlers. The conduct of the owners of the Malibu was certainly not unneighborly, since they freely allowed these settlers the use of this beach road, and more than that, permitted them to construct their roads and trails from the beach road over the lands of the Malibu to their locations on the government land to the north. The first of these settlers beginning at the westerly line end of the ranch were Harris and Guthrie. To make possi-
879 ble a means of communication between their lands to the west of the ranch and the town of Santa Monica, and thus to avoid the necessity of crossing the almost impassable Ventura mountains to the north, they did some work of grading in the arroyos, barrancas and canyons on the western part of the ranch, and in 1884, for the first time in its history, they drove, as has been said, a two-horse wagon from Santa Monica to their locations. They lived upon their claims until the year 1900, when they sold to Mr.

880 Rindge, the then owner of the Malibu. Thereafter there was no location and no settler on the lands immediately to the west and to the north of the westerly end of the Malibu. In 1886 one Sweeney made his location on government land in the upper reaches of Nicholas canyon, some two or three miles east of the westerly line of the ranch. He sold to Nicholson, and in 1904 Nicholson's holdings passed by purchase to Mr.
881 Rindge. There has since been no occupancy nor need of use for this beach road by any person west of Encinal Canyon. Between Encinal Canyon and Nicholas Canyon lies Lechuza Canyon, but, as has already been said, the Tapias, there located, moved away in 1876, and there has been no settlement in Lechuza Canyon, either on or off the ranch. In 1886 Marion Decker located upon a claim in Encinal Canyon immediately to the north of the line of the ranch. He
882 came to his location over the Ventura mountains. After establishing himself he built his private road down the canyon to the beach road. Decker retains his holdings and is one of the principal witnesses for the plaintiff in its contention for a public highway. Decker testifies to the purchase by Mr. Rindge, beginning in 1895, of the settlers' claims until by 1901 "there were left only myself and Drake." Decker's road to the beach road was unquestionably a private way, constructed with the acquiescence of the

883 owners of the Malibu, and his use of the beach road to Santa Monica would no more establish its character as a public road than would the use of his road from his claim to the beach road fix the character of that as a public highway. (U. S. vs. Rindge, 208 Fed. 611.) Las Trancas Canyon lies a little over three miles east of Lechuza Canyon, at which latter canyon, under the order granting a new trial, the public highway in the present state of the record now ends. Claims
884 were taken up in this canyon by two men, who, in turn, sold to Mr. Rindge. The testimony of Mr. Decker is that there are claims on government land in Escondido Canyon, which lies approximately half way between Lechuza Canyon and Malibu Canyon, owned by Schumacher, Mellus, Gillis and Diss, and that they have done some work constructing a private road from their claims to the beach road. No one of these
885 presented himself as a witness in the case. It appears, then, that even before the commencement of this action Decker and Drake were the only two persons who had any use for the beach road, and the contention of appellant is that the use which they have made and are making of it is precisely the use which they have made and are making of the private road from their claims to the beach road—a permissive use for a private way under the sanction of the owners of the ranch.

886 Appellants further rely upon the failure of the county of Los Angeles ever to declare this road a public highway, or ever to exercise any dominion or control over it, or ever to expend any money in its maintenance, care or betterment. It was not declared a public highway by the Court of Sessions under the statutes of 1850 (Stats. 1849-50, page 200). It did not become a public highway under the provisions of the Act of 1855 (Stats. 1855, page 192), which declares public
887 highways to be those so designated by the Court of Sessions or board of supervisors, or which may be hereafter so declared by the board of supervisors. Nor yet did it become a public highway by virtue of the provisions of Sections 2618 and 2619 of the Political Code as they read when that code took effect in January, 1873. Nor, finally, did it become a highway by virtue of the special road laws applicable to the county
888 of Los Angeles, found in the statutes of 1877-78 (Stats. 1877-78, pages 6 to 17), both of which acts contemplate that the supervisors, before any such road shall be or be decreed to be a public highway shall "cause said road to be properly located and declared as a public or county road," and in this connection reference also is made to Section 2621 of the Political Code, which declares that "no route of travel used by one or more persons over another's land shall hereafter become a public road or byway by use, or until

889 so declared by the board of supervisors, or by dedication by the owner of the land affected."

The testimony of the settlers, whose occupancy of the government lands began about 1884, is to the general effect that they were not disturbed by the owners of the Malibu Ranch in their use of the beach road; that in many places it was, of course, no road at all. The settlers themselves, for their own convenience, made improvements in the natural conditions
890 where it was necessary to leave the beach. The mesas were not cultivated and one could drive over them at pleasure. "In the early years there was nothing but a bridle trail. We drove where we pleased. There was no injury done. We first found a road or way marked by wagon tracks west of Encinal Canyon about 1888 or 1889. During the early years we traveled practically all the way from Malibu to Ramirez on
891 the beach. Whatever patches of road there are which are not in hard sand have been built since that time. There were miles of way along the Malibu Ranch where, during the time we lived there, the only convenient way to travel was where the sand was made hard by the water." Such, and much more to like effect, is the concurrent evidence of plaintiff and defendants. It is to be noted that all such parts of the road as ran along the beach between high and low tide—and this was much the greater part of it—was

892 not on the ranch at all. It was on tide lands owned by the state. These natural conditions, with the slight improvement which the settlers made in them for their own convenience, continued until after Mr. Rindge acquired title to the ranch and in 1894 erected gates—one at the easterly entrance to the ranch, the other at Malibu Canyon. From the first Mr. Rindge insisted that there was no public way upon the
893 ranch; that the road was only a private road, permission to use which had been accorded to the settlers. He gave to them keys to the locked gates. They, or some of them, insisted that the road was a public highway, and being advised by their attorneys that the acceptance and use of keys might militate against this position, they caused Mr. Rindge to be cited before the board of supervisors for obstructing a public highway, the citation being that Mr. Rindge show cause
894 "why a certain gate described in said summons should not be removed from an alleged public highway." Mr. Rindge at this time had spent large sums of money in building a road from the eastern boundary of his ranch to Malibu Canyon. He made answer that the gate which he was maintaining was on this privately constructed and privately owned road. He conceded the existence of the beach road as a public highway from the eastern boundary of the ranch "to a point on the beach opposite the Mal-

ibu lagoon." He declared that none of the neighbors "had ever been hindered or their friends from passing through, and many privileges had been given them." The result of the hearing under this citation was most inconclusive and unsatisfactory. No official action was taken by the supervisors other than an indefinite continuance. It is asserted by plaintiff that this indefinite continuance was the result of a compromise agreement by which, in effect, Mr. Rindge admitted the road through the ranch to be a public highway. On behalf of the defendants it was stoutly insisted that his admission went only to the road from the easterly line to Malibu Canyon, and that under this admission he ceased to lock the gate at the entrance of the ranch, but maintained a locked gate at Malibu Canyon. He persisted in this for some time, and the settlers upon the other hand, broke the lock and frequently destroyed the gates. He posted signs and warnings at and near the gates. He published similar warnings in the newspapers. The form of such signs and notice was, "No passing through the Malibu Ranch is allowed. No camping thereon under penalty of law. Shooting and hunting forbidden." Mr. Rindge, and Mrs. Rindge after him, continued their interruptions and protests with pertinacity until finally this action was brought.

898 It is manifest that if a public highway exists at all, it exists by prescriptive user and not by official acceptance of an offer of dedication, nor by any official recognition of the existence of the highway. Indeed it is quite plain that any county would be extremely slow to take into its charge and burden itself with the care of such a strip of ocean beach, which from the very nature of the country would have slight use and less value. In opening the waterfront of their
899 ranch to the travel on foot and horsemen the owners were but following the custom of the country. When that travel of necessity sought the mesa uplands it would have been unneighborly to the last degree to have checked it or turned it back, and the owner's failure to do so .o more established intent to dedicate a public highway than would their reception and entertainment of such a travel over night have es-
900 tablished their intent that he should take up a permanent residence with them. Dedication under such conditions is not to be lightly inferred. (Harding vs. Jasper, 14 Cal. 642; Cerf vs. Pfleging, 94 Cal. 131; Niles vs. City of Los Angeles, 125 Cal. 572.) It is quite understandable that the settlers upon the one hand, because their passage was not interfered with, may have come to the conclusion that they were traveling as of absolute right over a public way, but their belief is not at all inconsistent with the position

901 and proof of the defendants that throughout the history of this primitive trail it was but a private way, which developed into a more or less efficient road, in the construction of which the public took no part, and the burden of which construction was largely borne by the owners of the ranch—the settlers, for their own manifest advantage, contributing some of their labor.

It follows herefrom that the findings of the court decreeing the existence of a public high-
902 way across the Malibu Ranch cannot be sustained and that the order refusing to grant defendants' motion for a new trial must be reversed. In this connection it is to be noted that the Rindges had constructed upon the uplands and away from the tidal beach a new road to Malibu Canyon. Apparently it is conceded that the beach road, as far as Malibu Canyon, is or may be regarded as a public highway. But this
903 admission or concession will not justify in and of itself a finding or declaration that the newly constructed private road is a public substitute for the original beach road.

The order denying a new trial is reversed.

HENSHAW, J.

We concur:

MELVIN, J.

LORIGAN, J.

I, B. Grant Taylor, clerk of the Supreme Court of the state of California, do hereby certify that the preceding and annexed is a true and correct copy of an opinion filed this day, as shown by the records of my office.

Witness my hand and the seal of the court, this 7th day of April, A. D., 1917.

B. GRANT TAYLOR, *Clerk.*

By GEO. H. S. DRYDEN, *Deputy Clerk.*

(Seal) San Francisco Office.

By Mr. Anderson:

It was in pursuance of that document which you have just read that that first meeting took place—I don't remember which one it was that the Triumfo road was discussed; I think it was the first one.

Mr. Anderson: Now, Mr. Burnell, was the date of the meeting in 1917—all I want to do is to put in the book and page; will you stipulate that the meeting referred to occurred on October 8th, 1917? It is page 41, book 19, I don't care for the entry unless you do, and the other meeting—

Mr. Burnell: The last one is page 219.

Mr. Anderson: The second meeting was held on May 27th, 1918, found at page 219 of the same volume. I think that is all.

Mr. Burnell: I don't know whether this is a pertinent time or not, but we would like to read

907 some of those records in, and I desire to now offer in evidence a portion of the record of the board of trustees on October 15, 1917, which is found in the Road Book No. 19, page 38, and the entry is short and I will just read it.

Mr. Anderson: Waiving any objection to it as to its not being redirect examination, we renew the objection that it is incompetent, irrelevant and immaterial, and has no bearing on the main case, as it occurred years after the resolu-
908 tion and it shows on its face that it does not pertain to either of the other matters.

Mr. Burnell: One of the theories under which it is offered is that counsel has just offered the minutes on page 41, as referred to, and that is a matter directly leading up to that meeting. It is the minute of the receipt of that communication.

Mr. Anderson: I simply offered that page to
909 identify the date, it having been brought out in direct examination that such a meeting was held. I don't offer the minutes.

Mr. Burnell: I am reading from book 19 of the minutes of the board of supervisors of Los Angeles county, minutes of a meeting on Monday, October 15th, 1917. "Office of the Board of Supervisors, of the County of Los Angeles, State of California, Monday, October 15th, 1917. The board met in regular session. Present: Supervisors F. E. Woodley, R. F. McClel-

910 lan, J. Dodge, and H. J. Leland, clerk, by A. M. McPherrin, deputy clerk. Absent: Supervisors J. J. Hamilton, chairman. In re Malibu Road. Order fixing date for hearing. A communication signed by May K. Rindge, and Rindge Company, by M. K. Rindge, Pres., dated October 10, 1917, requesting that no definite or final steps be taken by the board of supervisors to condemn right of way for a road through the Malibu Ranch until all parties interested in the
911 matter be given an opportunity to be heard, is presented; and on motion of Supervisor Dodge, duly seconded and carried, it is ordered that hearing in said matter be set for Thursday, October 18th, 1917, at ten o'clock a. m."

Mr. Burnell: I presume that it may be stipulated that I am omitting all of the minutes excepting those relating to the road. I now desire to offer in evidence the minutes of October the
912 18th, 1917, page 41, being a portion of the minutes of a meeting held Thursday, October 18th, 1917.

Mr. Anderson: Our objection goes to all of this without repeating it?

The Court: Yes. Same ruling.

(Exception No. 6.)

Mr. Burnell: "Office of the Board of Supervisors of the County of Los Angeles, State of California, Thursday, October 18th, 1917. The board met pursuant to adjournment. Present:

913 Supervisors J. J. Hamilton, chairman, presiding, F. E. Woodley, R. F. McClellan and J. F. Dodge, and H. J. Leland, clerk, by A. M. McPherrin, deputy clerk. In re Malibu Road, proposed condemnation of land. This being the time heretofore set for a hearing in the matter of proposed condemnation of land for a right-of-way for a road through Malibu Ranch, the matter is called up. The board is addressed by Mrs. May K. Rindge, and by W. H. Anderson,
914 her attorney, and also by H. H. Manley and other interested property owners. Whereupon, on motion of Supervisor Woodley, duly seconded and carried, it is ordered that the matter be taken under advisement."

Mr. Burnell: We are not offering this now, but the next thing in the minutes relating to the Malibu Road question is on page 77, road book 19, which is a resolution ordering the condemna-
915 tion of the land necessary for the highway that is sought to be acquired by the second suit, the Alisos canyon.

Mr. Newby: You are not contending that there was any petition for the particular road between those times, appearing there?

Mr. Burnell: Oh no. The next entry is page 210, road book 19, and it is an extract from the minutes of a meeting of the board of supervisors held on the 13th day of May, 1918, beginning as follows: "In re Malibu Road, petition for

916 abandonment of proceeding for opening and improvement. A petition signed by May K. Rindge and Rindge Company by May K. Rindge, asking that all proceedings for the construction of a highway through Malibu Ranch be abandoned, that condemnation suits now pending in the Superior Court for condemnation of land for right-of-way for said road, be dismissed, and requesting a hearing on said pe-
917 tition is presented and on motion of Supervisor McClellan duly seconded and carried, it is ordered that said request be granted and that hearing on said petition be held in the office of this board on May 27th, 1918, at 2 o'clock p. m." The next entry I desire to offer is found on page 219 of the same book, being a portion of the minutes of a meeting of the board of supervisors held on the 27th of May, 1918, reading as follows: "Office of the Board of Supervisors, of
918 the County of Los Angeles, State of California, Monday, May 27th, 1918. The board met pursuant to adjournment. Present: Supervisors John J. Hamilton, chairman, presiding, E. J. Delorey, R. F. McClellan and Jonathan S. Dodge and H. J. Lelande, clerk, by A. M. McPherrin deputy clerk. Supervisor F. E. Woodley being absent on vacation. In re Malibu Road: Hearing on petition for dismissal of condemnation suit. This being the time set for hearing on the petition of May K. Rindge and Rindge Company

919 for abandonment of proceedings for the opening and construction of a highway through Malibu Ranch, and for the dismissal of condemnation suit now pending in the Superior Court in said matter, the matter is called up and the board was addressed by Nathan Newby, Esquire, and others, in behalf of petitioners and by various persons in opposition to said petition. Whereupon, on motion of Supervisor McClellan, duly
920 seconded and carried by the following votes to-wit: ayes, Supervisors Delorey, McClellan, Dodge & Hamilton; noes, none; it is ordered that said petition be denied and that the county council be instructed to proceed with action for condemnation of rights of way for said road."

Q. Now, I will ask you if, according to your best belief, that the statement contained in this petition on July 7th, 1917, signed by you and sent to the board of supervisors, if that was cor-
921 rect? A. So far as I know. I think Mr. Anderson or Mr. Newby, the attorneys prepared this petition.

Mr. Anderson: I will stipulate right now that I prepared it. Mr. Newby was not connected with the matter at that time.

Mr. Burnell: At all events, of course you looked it over and you were familiar with the statements made before you signed it? A. Yes.

Q. On the page before the last you stated the fact as follows: "That while it would doubtless

922 be more convenient for them (meaning the settlers) to make use of the roads through the ranch in order to get to Santa Monica & Ocean Park, for the purchase of supplies, they, nevertheless can, with added difficulty, it is true, reach supply centers to the north and west and are not, therefore, under any absolute necessity of using the roads through our ranch." That statement is true, is it not? A. Of course, we have the roads already made. They have made no roads.

923 Q. Was that true, or untrue? A. I presume it was.

Q. You believed so at the time—at the time you made it? A. There are one or two of them that could be.

Q. So that there were at that time settlers who could not reach Santa Monica and Ocean Park to buy their supplies without going over your ranch? A. No, none whatever. They

924 have been shut out from the ranch.

Q. Yes, but I say that they could not get to those two cities without passing through your ranch? A. Oh yes, indeed, they came in that way. They came in by the Crags Country Club and the Triunfo route.

Q. Did they come in from Santa Monica that way? A. I think they came from Los Angeles.

Q. But to get to their homes from Ocean Park or Santa Monica without going through your ranch, when it was locked up, they would

925 have to go a round-about road? A. No; they could go through Topanga. It is just as direct as through our place.

Q. That is, from Santa Monica to the homes of these settlers you think it would be just as direct by Topanga canyon? A. Yes, because their land is between our land and the state highway.

Q. And were there roads from the Topanga road to the land of these settlers? A. Yes,
926 there were roads and trails the same as down to the ranch, that is, roads part of the way and trails the rest of the way; these trails were not trails over which automobiles could usually be driven or even a wagon. They were just merely trails that the cattle had run out in early days, and then the people had settled this government land.

Q. Then it is a fact, as stated in this pe-
927 tition, is it not, that for many years the Rindge Company and yourself, as owner of the Malibu Ranch, have been, to the best of your ability, fighting the efforts of these settlers to pass through your land? A. Why, at first we did not oppose them. At first we did not oppose them. We let them go through, and they would come to our place at night. We would ask them to stay over night. We would give them their food. We would ask them to camp on the ranch. We would take care of the horses. And

928 then we commenced to be relieved of so much stuff. That was not this first crowd. The first crowd, everything was all right. That was in Mr. Rindge's lifetime and in my lifetime too. They stayed all nights our house. I prepared their rooms and Mr. Rindge looked after the feeding. This pleasant feeling was before Mr. Rindge's death, and after his death until they commenced to break down the gates and go in
929 there and try to get a spectacular proceeding. They usually did it surreptitiously, of course; we know pretty well it was the settlers; somebody saw them.

Q. For some years you have been fighting, to the best of your ability, to prevent the settlers and others passing through the Malibu Ranch? A. Not until the suit was brought.

Q. What suit was that—the government suit? A. It was right after my husband died
930 some time.

Q. Is it not a fact that both in and out of the court that you—when I say you, I mean the ranch or the Rindge Company— A. Yes; my children too.

Q.—have been opposed to the [illegible]ting of any public roads through the Malibu Ranch for many years. A. We don't want a road through the Malibu Ranch, because it will break up the ranch.

Q. I don't care for your reasons; but the

931 fact is that the owners of that ranch have been persistently opposing the public having a road through the ranch. A. Because there is no need of it. They can go on the state highway.

Q. That is another question, but isn't that a fact that you have been? A. Yes; we don't want a road through the ranch.

Redirect-Examination

By Mr. Anderson:

932 Q. Mrs. Rindge, why have you been opposing and not wishing a road through the ranch these years? A. On account of fires. One reason is on account of fires and on account of cattle being stampeded, and the shooting of the stock, and we had our pasture all burned off twice. We have had to take the cattle out, and it has cost us as much as the whole band of cattle were worth to get people from other places, and we have had our houses burned

933 down and our ranch machinery burned up, and we think that is enough. Of course, we have many reasons why. There is a lot of smuggling going across the ranch; we want to stop that smuggling. If we see the people down on the ranch, we can keep them from going beyond. There isn't half the smuggling going on now across the ranch as there was when the roads were open. Of course the people just about lived on us; their horses lived on us. Take eight or ten people a day, having them eating your hay

934 and your beans, and it becomes very annoying in the end. You cannot lay down a double-tree or a single-tree or a hammer or neck yoke or anything else that is big enough to be carried off the ranch, that it is not gone when you go after it. It becomes annoying in time. These are some of the reasons. I presume I have a hundred more. They have chopped down our trees. They take our bridges and our roads. They have taken things from us. They have taken
935 our cattle. They go in and steal our cattle and steal our horses and mules and sheep and pigs. We have lost a tremendous amount of livestock through people being on the ranch when we could not put them off. The reasons are endless that any rancher would not like the people going through the ranch promiscuously; but fires is one of the greatest dangers because that takes everything.

936 Q. When you speak of or make use of the term "break up the ranch," what do you mean by that? A. It was cutting it up into so many pieces. We would not be able to farm it economically, and in these days a ranch has to be run economically or else you can't run it at all.

Q. Anything with reference to the fences? A. Yes; keeping up the fences and keeping our livestock from going out on the roads would be a tremendous expense, keeping the people from trespassing. We have had to have four to eight

937 line riders during the fire season and the hunting season. People will go in there and hunt and picnic; it would be impossible to keep them off if there were public roads on the ranch. Wherever they go, there is an object lesson between Santa Monica and the ranch, what people would do, and what they make their brags they are going to do.

938 Q. Have you had any experience that attempts to affect any of these reasons so far as the public use of the road is concerned? A. Yes, every one of these. The road was opened from 1907 until about a year and a half ago, and during that period it was used by the public. We have not had the experience I speak of since the road was closed. Prior to that time we did. There was a continual and continuous annoyance one way or the other.

Recross-Examination

939 By Mr. Burnell:

Q. Mrs. Rindge, hasn't there been, as far as you know, more or less ill feeling between yourself and some of these so-called settlers? A. No; I have no ill feeling.

Q. No feeling that would have made some of these people do things that in its absence they would not have done? A. No, I don't think so.

Q. Mrs. Rindge, don't you think that some of these reasons would be obviated if upon a road being built through the ranch it should be

940 properly fenced upon either side so that the public could be kept off your land,—a barbed-wire fence, and signs on it? A. Do you think a barbed-wire fence would keep that crowd out?

Q. Well, I don't know. A. No, sir; there is not a fence in Christendom would keep that crowd out if they wanted to go in.

Q. Do you think that the class of people that travel over that road differs in any respect from
941 the class of people that travel over highways in general? A. Yes; because lots of people will go in and take advantage where lots of other people will not take advantage. You can see that on the way up to the Malibu, the crowd that is along there; and that is detrimental to anybody's health. The first rain there is a terrible odor all the way up and down there from these people, from between Santa Monica and the ranch. I am referring to people that camp along
942 the beach, and you can't keep them out of it. It would be an impossibility. You would have to keep a hundred line riders to keep the crowd out that want to go on the ranch. That is not more or less a matter of personal opinion; that is experience. The road was just lined before we closed them out. They would go as far as they could with machines. The people are so foolish about fires. Right in front of the Malibu we had a barley field coming to the sand. Instead of them going into the sand to build a fire they

943 would go into the edge of the barley. They would go and build a fire in the edge of the barley and it keep our men busy all day Sunday putting out fires. They could only get the other side of the Malibu canyon.

Q. Do you think you have experienced any greater difficulties than the owners of other ranch property whose properties lie along the sea coast?

944 Mr. Anderson: Object to that as argumentative; no foundation laid.

The Court: Overruled.

Exception No. 7.

A. Why, I think the supervisors and the people that own property back there have urged these people—I know Jack Henry at the gate, he would say, "Go on in, they can't put you off." We are supposed to own the land. "Go on in. They can't put you off. Do this and do that." I

945 think it was a put up job to get a road through there on the part of the supervisors and the people back in there. We have missed tools after certain people have gone through; we have missed them all along the line. I never noticed who in particular—just in general. When the people would pass through things would be gone. We have quite a number of people living on the ranch just in the past year, to whom we lease part of it. We have never leased it

946 before the past year. Last year was the first year. We leased just the bean land.

Redirect Examination

By Mr. Anderson:

Q. Mrs. Rindge, Mr. Burnell has asked you if you didn't think the fences, properly constructed fences there would give some benefit in the matter of this travel. Now, I will ask you isn't it your opinion that if a road is built through that the fences will be necessary in
947 order to restrain the cattle and other purposes? A. Yes; for the cattle, but not for the people.

A. M. MCPHERRON,

a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Anderson:

I am deputy county clerk and active clerk of
948 the board of supervisors and have been for a great many years, and was such on August 21st, 1916, and have been continuously such ever since. As such I have charge of the record books of the county with reference to the supervisorial proceedings and road matters. I am familiar with the facts of the resolution entitled "In re Malibu Road, road district No. 4, resolution authorizing condemnation proceedings," which was passed on August 26, 1916, and is found in volume 17 at page 344

949 of the road book. Prior to the passage of that resolution, no notices to my knowledge, were sent out to May K. Rindge, or any officer of the Rindge Co., or any officer of the Hueneme, Malibu and Southern Railway Company, or any officer of the Hueneme, Malibu and Port Los Angeles Railway Company, concerning any hearing on the subject of that resolution. I would have charge of that unless it was done by the Legal Department. As the officer of
950 the board of supervisors, I sent no notice. There was nothing in the minutes instructing you to send any such notice, and I received no such instructions from the board.

Q. Very well. Now I will ask you concerning this particular resolution I have just been talking about, whether or not there was any hearing before the board of supervisors sitting as such in open session, before the passage
951 of that resolution, or the subject matter of it. A. I cannot answer that question. It is some years ago. Various resolutions pertaining to the same matter have been adopted.

Mr. Anderson: Can't we agree about that without putting him to the trouble of searching the records?

Mr. Burnell: I haven't sufficient personal knowledge.

Mr. Anderson: Very well, I will ask Mr. McPherrin to do this, to see if the records show

952 any such meeting and then either state the resolution to Mr. Burnell, and I will accept it, or come up here.

Mr. Burnell: Yes.

Mr. Anderson: Now, so far as the minutes of that date are concerned, does it show or is there any showing that there was a hearing on the resolution at that time or that anyone was there present, for or against it? A. Nothing
953 in the minutes to indicate this hearing.

Q. Or any hearing on that date, other than the mere passage of the resolution? A. No, sir, that is all.

Q. Calling your attention to Book 19, page 17 as to the resolution in re proposed road in Malibu Ranch, the resolution authorizing the condemnation of land for a right of way adopted December 3rd, 1917, I will ask you whether or not you were instructed to send out
954 notices concerning the adoption of that particular resolution before it was adopted. A. No sir, I was not. My answer to that is the same as to the other you asked me about.

Cross-Examination

By Mr. Burnell:

At any of these meetings at which the three different resolutions were taken up, I do not remember any discussion by the members of the board on the general subject of the resolution, though I would not say there was not.

955 I do not remember whether there was any discussion. I don't remember whether there was any instruction given to the county counsel to prepare the resolutions, any instruction by the board outside of the resolution itself. I do not know where the board of supervisors acquired the long description that is contained in the first resolution passed in 1916.

2 o'clock P. M.

956 (Jury present and in the box.)

A. M. MCPHERRON,

Cross-Examination (Resumed)

By Mr. Burnell:

I have acted as clerk of the board of supervisors about 14 years and during that time I have been present at almost every meeting. Not over ten meetings during that time that I have not been present at.

957 Q. Calling your attention to the time prior to the passage of the resolution ordering the condemnation of the road through the Malibu Ranch, some time, I believe, in August, 1916—

Mr. Anderson: August 26th.

Mr. Burnell: August 26th, 1916, and particularly to a meeting held in the year 1916 before that time, do you recall whether or not there was any discussion in the board and between the members of the board relative to the acquisition and condemnation of land for the road through the Malibu Ranch?

958 Mr. Anderson: I object to that as immaterial, if the court please.

The Court: Overruled.

Exception No. 8.

A. There have been discussions of that, I should think, for eight or ten years at different times. It came up occasionally and was discussed by the members of the board, and for the last five years especially, the discussion has been quite frequent.

959 Q. By Mr. Burnell: Do you recollect whether or not there were occasions prior to August 26th, 1916, at which persons other than the members of the board addressed the board of supervisors relative to the necessity, feasibility and practicability of a road being put through the Malibu Ranch and by that I mean a public road?

Mr. Anderson: Objected to as incompetent,

960 irrelevant and immaterial and too general. It is perfectly apparent there were various road matters connected with the Malibu Ranch such as the route to be taken and the hearing before the court and it seems to me that if there is any attempt to be made to show the omission from the minutes it must be with reference to this particular resolution and the road covered by this resolution.

The Court: Overruled.

Exception No. 9.

961 A. I know that there were other meetings but I cannot refer to any specific date or occasion when the board was addressed by outside parties. I know that to be the fact that the board was addressed. I know that the board has been addressed by outside parties, previous to this date, on the question of the Malibu Road. I cannot state the exact date.

Redirect-Examination

By Mr. Anderson:

962 I know that some of the discussion that was had before the board of supervisors was with reference to the lawsuit, one in the Federal Court and the other before Judge Oster.

Q. Don't you know—have you no recollection of any discussion by anybody as to this particular road covered by this resolution, August 26th, 1916? A. Outside of the members of the board?

963 Q. Yes. A. I can not state any particular instance.

Q. Your records do not show any public meeting concerning that particular road prior to the adoption of that resolution? A. I haven't found any. May be I misunderstood the question. I thought it was with special reference as to whether or not the county counsel had been instructed to prepare a resolution.

Q. Not at all. Anywhere, in the book—the

964 inquiry was is there any place where the records show any meeting or memoranda of any kind prior to the resolution of August the 26th? A. I think I can answer that. On January 31st, 1916, a resolution was adopted authorizing the county counsel to take such steps as might be necessary to institute proceedings in the Superior Court for the condemnation of a strip of land forty feet wide through the Mal-
965 ibu Ranch.

Q. Can you give us the book and page? A. Yes, it is Book 17, page 16.

Q. Does that show there was any hearing at that time on the subject by anyone outside of the board of supervisors and the county counsel's office? A. I don't think so. I am not sure about that, but I don't think so.

Q. Are those the resolutions you have reference to, page 16 and 17, book 17? A. Yes,
966 those are the resolutions.

Mr. Anderson: We would like to offer these in evidence, if the court please. First on page 16, book 17, under date of January 31st, 1916—

Mr. Burnell: That is the road book, isn't it?

Mr. Anderson: Yes. "In re Malibu Road. Petition of Venice Chamber of Commerce asking that the board of supervisors adopt necessary measures for opening the road extending through the Malibu Ranch commonly known as the Malibu Road is presented and on motion of

967 Supervisor Hinshaw, duly seconded and carried, said communication is ordered placed on file." Another resolution, "In re Malibu Road. Resolution authorizing condemnation proceeding. A petition signed by C. B. Kersley and others, asking for the opening of a public road through the Malibu Ranch is presented, and on motion of Supervisor Hinshaw, duly seconded and carried by the following vote, to-wit: Aye,
968 Supervisors Hamilton, Norton, Woodley, Hinshaw and Pridham; noes, none, it is ordered that the following resolution be adopted: Whereas, in the case of the People of the State of California, Plaintiff, vs. May K. Rindge, Administratrix, et al., Defendants, numbered B-59,557, of the Superior Court actions, County of Los Angeles, State of California, the Superior Court of the county of Los Angeles has held that certain road, known as the Malibu
969 Road and extending from the southerly line of the Malibu Ranch to that certain canyon located in the northerly part of the Malibu Ranch, known as La Chusa Canyon, to be a public road of the width of 20 feet; and

Whereas, said case has been appealed to the Supreme Court of the state of California and the matter is now before said Supreme Court for its decision; and

Whereas, the status of that certain stretch of road known as the Malibu Road and extending

970 from La Chusa Canyon on the south to the Ventura county line on the north is in dispute; and

Whereas, as action for injunction has recently been begun by the Rindge Company, a corporation, the owners of said Malibu Ranch, in the Superior Court of this county against John Fitzpatrick and others, which said action is numbered B-32480, for the purpose of enjoining travel over and across the Malibu Ranch
971 over that certain road through the Malibu Ranch alleged in said action to be the private road of the Rindge Company; and

Whereas, it is apparent to this board after investigation of the premises that further litigation may be avoided by the condemnation of certain parcels of land through said Malibu Ranch for highway purposes; and

Whereas, it is apparent to this board that
972 many stretches of that certain road, decided in said action of the People of the State of California, vs. May K. Rindge, Administratrix, et al., to be a county road, have become and are impassable and impossible of construction for the following reasons, namely: that said stretches are along the sands of the beach where they are constantly in danger of being washed by the tides; that such stretches are subject to landslides from adjacent banks; that such stretches, no matter how well constructed, would

need constant repair because of the drifting of the sands of the sea; and

Where as, it has come to the attention of the board that the property owners living adjacent to said Malibu Ranch (by the action of the Rindge Company, a corporation, the owners of the Malibu Ranch) are being deprived of access to their homes;

Now, therefore, be it resolved that the county counsel of the county of Los Angeles be and he hereby is authorized and instructed to take such steps as may be necessary to institute proceedings in the Superior Court of the state of California, in and for the county of Los Angeles, for the condemnation of those certain parcels of land 40 feet in width throughout the Malibu Ranch and along the coast of this county, beginning at the southerly line of said Malibu Ranch and extending northerly to the Ventura county line, and that he be and he hereby is instructed to prepare and present to this board a resolution authorizing and directing him to institute proceedings for the condemnation of parcels of land that will permit of a highway through said Malibu Ranch, as hereinabove indicated, all of which shall be so situated as to be above the line of the highest tide of the sea."

Q. Now, I will ask you concerning that resolution, were you instructed to give any notice

976 to anybody concerning the matter, in the matter of any hearing, before it was adopted? A. No, I think not, Mr. Anderson. I don't remember whether or not Mrs. Rindge or anyone representing the Rindge Company appeared before the board in connection with that resolution, or anything in connection with it at that time. I don't remember seeing them there at all events. I don't remember whether they
977 were there or were not. In fact, I don't remember any circumstances connected with the meeting and resolution. There is nothing in my records that shows any notice having been given for that particular meeting.

Q. And you do know of your own knowledge that you were not requested by the board to send out any such notices? A. Well, I can't swear positively to that. I don't think I was.

Q. Can you swear that you ever sent any
978 concerning that particular matter? A. I don't think I ever sent any.

Q. What is the next matter? A. Resolution adopted by the board, or possibly not a resolution, on July 30th, 1917. That is in book 18, page 365. That resolution or order—

Q. Just a moment. This, if the court please, is under the date of July 30th, 1917.

"Office of the Board of Supervisors of the County of Los Angeles, State of California. Monday, July 30th, 1917. The board met in

979 regular session. Present, Supervisors J. J. Hamilton, chairman, presiding, R. H. Norton, F. E. Woodley, R. F. McClellan and J. S. Dodge; and H. J. Lelande, clerk, by A. M. McPherron, deputy clerk."

"In re Malibu Road: Order relating to obstructions."

"The attention of this board having been called to the obstruction of Malibu Road near the boundaries of the Rindge estate property,
980 on motion of Supervisor McClellan, duly seconded and carried, it is ordered that the county counsel be requested to make necessary investigation and report whether title to said road is now vested in the county of Los Angeles, and if not so vested, to adopt necessary measures to secure title to said road."

Q. Have you any further resolutions? A. I have a memorandum of a resolution adopted on
981 May 27th, 1918.

Q. I will ask you this: Have you there any memorandum of a resolution adopted—This is July, 1917. You have one on May 27th? A. May 27th, 1918.

Q. What volume? A. I have not a reference to that. It must be in book 19.

Q. This was May 27th, 1918. A. May 27th.

Mr. Anderson: This was passed, of course, if the court please, after the Los Alisos resolution, but before the resolution with reference

982 to the beach road, and I think it is due, Your Honor, that all of those matters, that are contained in this book should go in the record. I have not read this resolution, but if it relates to the— Well, this is in I think. This resolution has already been offered. This is the resolution of May 27th, 1918, in re Malibu Road hearing on petition for dismissal of condemnation suits. That is already in evidence.

Q. Have you any others?

983 The Court: They have denied the petitions and it instructs the county counsel to proceed.

Mr. Anderson: Yes, instructs the county counsel to proceed with action to acquire right-of-way for said road.

The witness: Aside from this, I find that numerous minute entries occur in reference to the Malibu Road. I was looking for special instructions to the county counsel to proceed.

984 Q. Now, Mr. McPherron, we hate to trouble you, but will you again take this book and examine it with reference to any action that was taken by the board, either prior or subsequent to August 26th, that has, in your judgment, a bearing upon either of these three particular roads now involved in these condemnation suits. A. I have a memorandum here showing the pages of the entries in books 16, 17, 18 & 19, I think.

985 Q. All of the references? A. All referring to the Malibu Road.

Mr. Anderson: Then, if the court will pardon us while we examine them—

Mr. Burnell: Probably it might be well to take an adjournment of ten minutes while Mr. Newby and I go over them.

Mr. Anderson: Mr. McPherrin, I want to ask you if these minutes were personally prepared by you yourself? Are they written up
986 personally by you? A. Well, I dictate them and instruct the stenographer.

Q. Calling your attention particularly to page 344, the minutes of August 26th, 1916, and the resolution which reads, "In re Malibu Road, road district No. 4, resolution authorizing condemnation proceedings," I will ask you if that particular resolution was dictated by you and approved by you after it was written, A. Well, I don't remember the particular case, but in a
987 case of that kind I would simply dictate to a stenographer this first paragraph here, giving the vote of the supervisors, and then hand him the resolution or hand the resolution to him and state it was adopted by a full vote.

Q. And that to the best of your knowledge was what was done in this instance? A. Yes; one of those two.

Q. All right. Let me have that. A. Yes. sir.

988 Mr. Anderson: I wish to offer a resolution, book 17, page 22 as follows: "Office of the Board of Supervisors, of the County of Los Angeles, State of California. Wednesday, February 2nd, 1916. The board met pursuant to adjournment. Present: Supervisors R. W. Pridham, chairman, presiding, J. J. Hamilton, R. H. Norton and W. E. Hinshaw; and H. J. Lelande, clerk, by A. M. McPherron, deputy clerk. Supervisor F. E. Woodley being absent
989 on account of outside county business.

In re Malibu Road: Resolution declaring certain portions of road a public highway. On motion of Supervisor Hinshaw, duly seconded and carried, it is ordered that the following be and the same is hereby adopted:

"Whereas, it has come to the attention of the board of supervisors of Los Angeles county that a right of way for road purposes has heretofore
990 been obtained by the public by prescription over and along that certain piece or parcel of land hereinafter described, and that certain piece or parcel of land hereinafter described has been used as a route of travel by the public for highway purposes for more than 20 years last past; and,

Whereas, it has come to the attention of this board that said piece or parcel of land is now being used by the public for highway purposes; and,

991 Whereas, it has come to the attention of this board that the Superior Court of Los Angeles county, state of California, has heretofore decreed and adjudged that certain piece or parcel of land hereinafter described to be a public highway, in that certain Superior Court action entitled, 'The People of the State of California, Plaintiff, v. May K. Rindge, Administratrix, etc., et al., Defendants,' numbered 59,557, Superior Court actions;

992 Now, therefore, it is hereby ordered and declared by this said board that the public have a right for highway purposes over said parcel of land hereinafter described, and that said parcel of land be, and the same hereby is declared to be a public highway and dedicated to the use of the public for highway purposes.

The parcel of land hereinabove referred to is described as follows:"

993 Then follows an elaborate metes and bounds description covering a number of pages, down to page 30, and with a closing sentence:

"Reference is hereby made to county surveyor's map No. 8039 on file in the office of the surveyor of Los Angeles county."

Now, it is stipulated by counsel that the resolution just offered is the resolution which describes the road shown on the map, exhibit A, to the complaint in the main case, as a coun-

994 ty road, declared a public highway by board of supervisors February 2nd, 1916, and the road which is described on the map.

Mr. Burnell: It is so stipulated.

Mr. Anderson: Then we wish to offer from book 17, page 77, under date of March 6, 1916, the following resolution:

"In re Malibu Road: Proposed employment of assistant counsel in trial of case in court. A report by the county counsel dated March 6,
995 1916, relating to litigation of matters connected with the opening of a road through Malibu Ranch, and recommending that Richard A. Dunnigan be employed as associate counsel in said matter, is presented; and on motion of Supervisor Hinshaw, duly seconded and carried, it is ordered that said matter be referred to Supervisor Hamilton and the county counsel for investigation and report."

Next we desire to offer from the same book
996 17 at page 79 the following:

"In re case of Rindge Co. vs. F. H. Joyner, et al.: Order authorizing employment of R. A. Dunnigan as associate counsel. On motion of Supervisor Hamilton, duly seconded and carried, it is ordered that Richard A. Dunnigan be employed as associate counsel to assist the county counsel in trial of case of Rindge Co. vs. F. H. Joyner, et al. The compensation for such service to be the sum of $50.00 per day for time

997 actually engaged in trial of the case referred to."

That resolution is dated March 6, 1916.

We have one more that we wish to offer. Book 19, page 108. Dated December 31st, 1917, of the minutes of that day, commencing on page 105, "Office of the Board of Supervisors of the County of Los Angeles, State of California, Monday, December 31st, 1917. The board met pursuant to adjournment. Present, Super-
998 visors J. J. Hamilton, chairman, presiding, E. J. Delorey, F. E. Woodley, R. F. McClellan and J. S. Dodge; and H. J. Lelande, clerk, by A. M. McPherron, deputy clerk. In re Malibu road. Resolution correcting minutes of August 26th, 1916. On motion of Supervisor Delorey, duly seconded and carried by the following vote, to-wit, ayes, Supervisors Delorey, Woodley, McClellan, Dodge and Hamilton; noes, none, it
999 is ordered that the following resolution be, and the same is hereby adopted:

"Whereas, a resolution was adopted by the board of supervisors on August 26th, 1916, authorizing the condemnation of certain land for right of way for Malibu Road (said resolution having been entered on pages 34 et seq. of road book 17, minutes of this board; and

Whereas, all five members of this board participated in the adoption of said resolution and voted in favor thereof, but through inadvert-

1000 ence or mistake, the minute entry of said resolution failed to show that all of said members did participate in said action and vote in favor of the adoption of said resolution,

Now, therefore, it is hereby ordered that the minutes of this board of said date, August 26th, 1917, be corrected so as to show the fact, namely: That upon a submission of said resolution authorizing condemnation of land for right of
1001 way for Malibu road, the following members of this board of supervisors voted in favor thereof, namely: Supervisors Hamilton, Norton, Woodley, Hinshaw and Pridham.

(Witness continuing). I have heard the last resolution read, directing that the minutes of the board of supervisors of August 27th, 1916, be so corrected as to show that all of the members of the board of supervisors voted on that resolution which has been offered in evidence to
1002 which your attention was called.

Q. Now, calling your attention again to the resolution on page 344, book 17, minutes of August 26th, 1916, I will call your attention to the fact that it recites in the preamble that "On motion of Supervisor Hinshaw, duly seconded and carried by the following vote, to-wit, ayes, Supervisors Hamilton, Norton, Woodley, Hinshaw and Pridham; noes, none, it is ordered" and so forth. Can you say now, after hearing the other resolution read, whether or not that

1003 appeared in the original minutes or whether a change has been made since the original minutes were written up? A. Whether this entry has been changed?

Q. Yes. A. I don't think so; I don't think there has been any change. I noted that this resolution was corrected a year or more after the date of the original minutes. I did not direct me to change the original resolution, but the intention was that the adoption of that reso-
1004 lution did have the effect of correcting the original resolution by showing the record of what each supervisor voted for. I don't know whether the original records show that.

Q. You have the minutes before you. What I am getting at is whether or not the minutes before you are the original minutes or if they were corrected in accordance with the resolution. A. Does the resolution show that?

1005 Q. Now, this resolution reads that "Whereas, all five members of this board participated in the adoption of said resolution and voted in favor thereof, but through inadvertence or mistake the minute entry of said resolution failed to show that all of said members did participate in said action and vote in favor of the adoption of said resolution," and further reads: "Now, therefore, it is hereby ordered that the minutes of this board of said date August 16th, 1916, be corrected so as to show the fact, namely, that

upon the submission of said resolution authorizing condemnation of land for right of way for Malibu Road, the following named members of this board of supervisors voted in favor thereof, namely, Supervisors Hamilton, Norton, Woodley, Hinshaw and Pridham." Now, does that refresh your recollection as to whether anything was done by your pursuant to that resolution? A. Read the part of it which refers to the book and page.

Q. "Whereas, a resolution was adopted by this board of supervisors on August 26th, 1916, authorizing the condemnation of certain land for right of way for Malibu Road (said resolution having been entered on pages 344, *et seq.* of road book 17, minutes of this board.") A. There is evidently an error in that resolution.

Q. You have no recollection of making any correction pursuant to the resolution? A. I would not have made a correction. As I said before, any resolution of that kind, we make no change in the original resolution at all; our understanding is that that resolution has the effect of correcting the other without adding anything to that.

1009 MAY K. RINDGE,

one of the defendants, recalled for further direct examination.

Direct Examination

By Mr. Anderson:

I have not personally, or as president and general manager of the Rindge Company, received any notice upon any hearing concerning the adoption or consideration of a resolution
1010 such as that of February 2nd, 1916, that you read over a few minutes ago. The same is true as to the matter of the resolution of January 31st, 1916, appearing in book 17, page 16, which Mr. Burnell read into the record with reference to instruction to the county counsel to proceed with the condemnation of property for a public road through the ranch; I did not have any notice of that. I had no notice of any hearing being held by the supervisors concerning the
1011 passage of any of those resolutions which have been read in evidence other than the notice of the hearing, on my request. I have never appeared before the board and testified under oath on any subject in connection with road matters nor produced any witnesses. I have never been advised by the supervisors that I had a right to produce witnesses or testify under oath.

1012 J. C. PATTON,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Anderson:

My name is J. C. Patton. I live on the Malibu Ranch. I am 33 years old. I was born in Oklahoma. I am employed now with the Rindge Company, on the Malibu Ranch and have been
1013 employed there about 18 months as superintendent of the ranch. My duties as superintendent consist of overseeing all work and all stock and the movement of such over the entire ranch. They also include matters connected with the cultivation of the ranch and any matter connected with the general care and patrolling of the ranch if such be necessary. During the 18 months I have familiarized myself with the ranch and its stock, and the various matters
1014 connected with its management. My occupation most of my life has been handling stock and farms, cattle and horses. I have been engaged in connection with cattle and stock about 20 years in Oklahoma, Texas and California on large ranches, mostly. I am familiar with the roads on the Malibu Ranch. The road through the ranch was not closed when I first went to work there; there was gate men, but people had keys and got through, and permission to get through. The road was being trav-

eled at that time. Our method of management with regard to the road that was being used by the public, prior to the time that that road was closed while I was there, was that we kept line riders riding the lines, closing gates, and putting out camp fires, and things that occurred at that time. Possibly six line riders on an average; sometimes less. The condition of the ranch now with reference to fencing and gates between the pastures and the cultivated lands is that there are gates between the fields and the cultivated lands and fences. The purposes of those gates and fences are to keep stock from going into the fields during the seasons when there are crops in the fields, starting in at Las Flores, the eastern entrance, and ending with the Ventura county line. There is a gate at Las Flores that is the entrance; the next gate is at the warehouse; the third at Malibu creek, and the fourth at Winter's canyon. That is just across the Malibu flat, just where you go upon the rise. The next one is near Puerco canyon, possibly half a mile west; that is east of Marie. The next one is near Marie Canyon; the next one is near Sosto; the next one is at Latigo. Then there is also one at Sosto, then Latigo. The next one is on the hill above S. Grade, which is located just at the top of the Latigo canyon as you go up on the mesa, where the road enters the field. The next gate is

1018 about—I can't describe the place, but about three-quarters of a mile west of this gate in the middle of the field—west of Escondido and about half way to Ramirez, right on the bridge. The next one is at the east edge of Ramirez canyon; the next one at the west side of Ramirez; and the next one at Zuma, east of Zuma canyon, eastern edge of Zuma; and the next one at the western edge of Zuma; the next gate is at La Chusa, on the left side after you cross
1019 the bridge; and the next is where the road went down to Nicolas, on the west side of Nicolas, after you cross the Nicolas.

Q. State whether or not there is any fence now on the ranch at the Ventura county line? A. Yes, there is now; a five wire fence, new. There is a fence at the western boundary. The Rindge property which is under my management extends beyond the Ventura county line for about a mile and a half, and at the western
1020 boundary of that land in Ventura county there is a five wire fence. From my experience in handling this ranch and other large cattle ranches, it would be necessary in protecting and guarding the fences to the ranch and these various places where the gates now are, in the case the gates were removed and a road was opened through the ranch and left open at each end, to have a guard where this road enters all fields, if it was not fenced, in order to keep the stock from

1021 going down and into the fields and getting off the ranch; that would necessitate a guard at each of those entrances; that would be a constant guard, night and day, to keep them out of the fields; it would require three men at each of these entrances; three shifts of eight hours. It would have to be guarded continually. I am engaged in employing men for the ranch and have been. I know the prevailing wages that are paid for men to do that character of work;
1022 we usually pay $60 a month. That includes the board and horses and everything furnished.

Q. Have you any idea—do you know from your own knowledge what it costs to board—costs the ranch to board one of those men?

Mr. Burnell: That is objected to as incompetent, irrelevant and immaterial.

Mr. Newby: The only purpose of this is to lay the foundation for the subsequent testimony that therefore fencing is necessary. If they will
1023 concede that fencing is necessary, we don't care to press it any further.

Mr. Burnell: Certainly we concede that fencing of a road going through any ranch is necessary.

Mr. Anderson: Then we will not press it any further.

Mr. Burnell: I don't want to lay any foundation for possible misunderstanding. We concede that it will be necessary to fence, I won't

1024 say every foot, because there may be places where the road goes so near the shore that a fence on one side would keep the cattle out, but along a good portion of the road it will be necessary to fence probably both sides of the road, and at others one side, if necessary, lying parallel with the road, for the purpose of keeping the cattle out of the field and out of the road.

Mr. Anderson: Very good.

1025 Mr. Newby: That is the only purpose.

Mr. Anderson: Now, Mr. Patton, are you familiar with the general surroundings of that ranch?

The Witness: Yes sir.

Q. With the roads that are adjacent to it? A. Yes sir.

Mr. Anderson: Let me have the map, if the court please, in the Alisos canyon case—that is,

1026 the complaint.

Q. Are you familiar, Mr. Patton, with the—

The Court: Are you going to use that?

Mr. Anderson: Just temporarily, just for identification.

The Court: You had better put up the easel. Is that exhibit "A" that you have there?

Mr. Anderson: Yes. I think I can ask the witness a question. Mr. Patton, do you know the point on the northern boundary of the Malibu Ranch where this proposed road terminates,

1027 the proposed road shown on the map, Exhibit "A," in case No. B-59443? A. Yes sir. I know whose property lies immediately to the north—Charlie Decker's. The residence of Mr. Decker from the point where this road that we are talking about terminates on the northern boundary line of the ranch is about half a mile. There is no road now at any point between the northern boundary of the ranch and Mr. Decker's residence. There is no road there now.
1028 There is a road from Mr. Decker's residence to the north by which he gets in and out to his place. That road runs down to Triunfo. That is a wagon road; I think it can be used by an automobile; I don't know that automobiles have been as far as the Decker place. I know that an automobile has been up on that road to possibly two miles north of Mr. Decker's. The road is a good wagon road for the mountains.

1029 Mr. Anderson: Take the witness. We are not going into the damage now. We expect to use Mr. Patton for that.

Mr. Burnell: Yes, I understand.

Mr. Anderson: And that may be repeated as to any witness.

Mr. Burnell: Yes, I understand.

Cross-Examination

By Mr. Burnell:

I have been over this road that leads from Triunfo to the Decker place. In my opinion and

1030 my experience it is not suitable for the hauling of heavy loads from the Triunfo post-office to the Decker place; it is suitable for a two-horse wagon, fairly loaded, I would say a thousand or fifteen hundred pounds. Triunfo is just a little post-office on the state highway that goes from Los Angeles up over Cahuenga Pass and over the west side of San Fernando Valley through Calabasas up to Ventura.

Mr. Anderson: Mr. Burnell, can we stipulate
1031 that that state highway connects with the Topango Canon road

Mr. Burnell: Oh yes.

Mr. Anderson: And that that Topango Canon road goes through Topango Canon down to the coast and along the coast to Santa Monica and Venice?

Mr. Burnell: Oh yes, I will stipulate with you on any facts that we agree on.

By Mr. Burnell: Q. Now, Mr. Patton, an
1032 automobile, according to your best information, could not be driven from the state highway up the Triunfo road up to the Decker place, could it? A. I am not in a position to say. I seen one about two miles north of Decker's and I don't know why they could not come on down. I have seen them about two miles from Mr. Decker's place. I am fairly familiar with the use of the automobile. I have traveled with them and have driven them.

1033 Q. When you speak about automobiles, I don't mean a trick, some stunt driver would pull off, but the use of the road by the ordinary driver of automobiles. With that understanding do you think that the road from Triunfo post-office to Mr. Decker's place is a practical automobile road? A. No sir. I haven't found, in my experience in managing ranches at the present time, that the automobile is used very extensively by ranchers for purpose of going
1034 back and forth from their homes and hauling their products; I don't use mine. The conditions on this particular ranch is so we cannot use an automobile successfully. Therefore, I don't pretend to make any use of it. The condition of the Malibu is that it is a stock ranch. We cannot go after the cattle in an automobile; therefore we take a horse. We use the automobile to go to town. The Rindge Company, or Mrs. Rindge, have two automobiles, I be-
1035 lieve. They use them to get on the ranch.

Q. Is there any road leading from the Decker place down to the edge of the Rindge property? A. I believe not.

Q. Has there ever been since you have known the property? A. There has been one that went around the hill and finally found its way onto the ranch. There is another road which comes down Encinal Canyon, from Decker's. That road is not in use at the pres-

1036 ent time; it has been; this road was used up until July of 1917. The gates were then locked by the Rindge people's employes.

Q. You told us on your direct examination about people having keys to the gates on the Malibu property; were those keys which unlocked all of the various gates which you have described? A. No, sir.

Q. How did they get through the gates at that time? A. Since I have been on the ranch,
1037 there was men on the upper and lower gate.

Q. Then the keys unlocked the gates between A. No, the road used by them did not include the gates, only the upper and lower.

Q. So there was a road through the ranch which was not fenced? A. Yes.

Q. Did you find any trouble with your cattle wandering down on that road? A. Yes, we found there was two or three gates which were
1038 used that were not locked, they were left open, people that went through them left them open, the upper and lower gates were locked but the gates between were not. I don't know of anyone excepting the ranch officials or friends, that had keys. The total number of persons that had keys was six, I think, possibly seven. Those people had permission to use the roads and had to use the keys to get in and out. People with keys usually came from Santa Monica, or Los Angeles in automobiles. They came up on the

1039 ranch on business. The people that traveled through the ranch from the canyons, Los Alisos and the others, after the road was closed up, were kept out of the ranch; if these people wanted to come down from the canyons and go to Santa Monica, they had to go around.

Q. What is the Yerba Buena settlement? A. I am not familiar with the names. It is where Mr. Fitzpatrick lives and several others—I don't remember who. About ten or twelve families.
1040 They used to come down through the ranch on the way to Santa Monica; since the roads are locked up, of course they can not do that any more. This Yerba Buena settlement is about four miles north of the extreme northern end of the ranch or the west end, as we call it, up the canyon; at the head of Yerba Buena Canyon. Those people used to traverse the ranch from one end to the other to get to Santa Monica;
1041 they went down to get supplies. Now they go through to the state highway and down.

Q. They have to travel around through Calabasas and down the west side of the San Fernando Valley through the Cahuenga Pass, through Hollywood, and then out over what is called the Sky Line Boulevard to the beach? A. I don't know; I couldn't tell you; I am not familiar with those roads.

1042 *Redirect Examination*

By Mr. Anderson:

Q. How long has it been since any of those people you claim lived in Yerba Buena Canyon have been permitted to go through the ranch? A. Since about the 1st of August of last year.

Q. How long has it been since any settlers other than those have been permitted to travel through the ranch? A. None since that time. It has been a year ago last August since anyone
1043 who had a settlement back in the mountains, east of Zuma Canyon, has passed through the ranch over the road. None of them have been permitted to make the trip since.

Q. Do you know whether or not there is any place besides Santa Monica and Venice that these people can get supplies? A. From the Yerba Buena settlement it is only 18 miles to Oxnard. From Triunfo to this settlement is about 8 to 10 miles; to Camarillo, I can not say.
1044 From Charley Decker's place to Triunfo is about 7 or 8 miles. I refer to the post-office on the highway as Triunfo. There is a store at Triunfo; there is also a store at Calabasas, about six miles from Triunfo, right on the state highway.

Q. Is there any public road on the ranch in Ventura county from the Ventura county line to the west

1045 Mr. Burnell: That is objected to as incompetent, irrelevant and immaterial.

A. Yes sir.

The Court: Did you hear the answer? I don't think you would have objected if you heard it.

Mr. Burnell: May be I will reconsider the objection.

The Court: Read it.

(Question and answer read.)

1046 The Witness: I didn't understand the question.

The Court: What is your objection, Mr. Burnell?

Mr. Burnell: Objected to as incompetent, irrelevant and immaterial.

Mr. Anderson: We move to have the answer stricken out, Your Honor. The witness says he didn't understand it.

1047 The Court: It will stay in the record. The record is made and I am not going to change it now.

Q. By Mr. Anderson: What roads are there on the ranch between the Ventura county line and the extreme west end? A. There is one road, leading up to Yerba Buena.

Q. How far is that store from the Yerba Buena settlement? A. From the mountains, about six miles. They can get to it by the road which they use by going over the highway, the

1048 other way. It is a store which carries general supplies. Cornell is located on the southerly part of the Russell ranch; that is about twelve miles, I would judge, from Yerba Buena settlement. That carries small supplies. From what I call the Yerba Buena settlement, down through the Malibu Ranch, along the coast road to Santa Monica is about 45 miles.

Recross-Examination

By Mr. Burnell:

1049 These various store places which I have mentioned are some of them in Ventura county; Oxnard, Camarillo and Strawberry Park are in Ventura county. From Oxnard to Yerba Buena is eighteen miles, I believe they call it. The store at Strawberry Park seems to carry most everything. I have had experience in buying merchandise and supplies of household goods. I find I can buy those things as cheaply

1050 at a country store such as Yerba Buena, Cornell, Calabasas and so on, as I get in the larger places such as Santa Monica and Ocean Park, and oftener you can get them cheaper. There is no post-office on the Rindge Ranch. There is no place there that is called Spanish supply post-office that I know of.

Q. By Mr. Burnell: Mr. Patton, is it possible for you to go from Yerba Buena settlement to any point on the Ventura county highway by any of the directions which you have

told us about with a loaded wagon over those trails? A. I couldn't say as to that; I haven't been over the trails.

Q. You don't know that it is a fact that they are merely horse trails that are so steep that a man cannot ride over them? A. I don't know.

Q. You have never been from this Yerba Buena settlement to any of those points that you have mentioned, Oxnard, Camarillo, Calabasas, Strawberry Park and Cornell? A. No sir, not directly from that settlement.

The Court: There is a question I would like to ask. You have referred to this Decker place, Mr. Patton; are there any settlers up there other than Mr. Decker? A. Yes, possibly eight or ten families within a radius of four or five miles. They live toward the ocean from Triunfo post-office, between Decker's and Triunfo. Decker's place is the furthermost place south. I know where the alfalfa patch is at La Chusa Canon. Mr. Charles Decker lives from that alfalfa patch about two and a quarter miles or two and a half. The kind of family Mr. Charles Decker has is a wife and five or six children. The next person to the north with reference to that alfalfa patch is a school teacher who lives about a quarter of a mile north of Decker's, contiguous to the road that Decker uses to get to Triunfo. The school teacher has one or two children. I know a family named

Malden. It consists of two or three children, about the place, and I don't know what the family relations are. There is a Mrs. Malden who lives there with her children. The Malden place from the alfalfa patch is two and a half miles north and a half mile west of this road which you call the Triunfo road. I know Mr. Ernest Decker and his family which consists of a wife and a child. His place is north from the alfalfa patch probably two and a half miles and a mile east. I know a Mrs. Mabel Kelph. She has a place up there. She lives up there only occasionally. I do not know what she does or who she is. That place with reference to the alfalfa patch is possibly two or three miles north and a half a mile east of the Triunfo road. I know a family named Parkes. I couldn't say whether there is any children or not. Mr. and Mrs. Parkes. That place with reference to that alfalfa patch and the Triunfo road is three miles north and a mile and a half west. They came in there sometime last year. I know a man named Humphrey. There are just him and his wife, I think. They live about three and a half or four miles north of the alfalfa field right close to the road mentioned. There is some other settler up there whose name I don't know; another house, but I don't know who lives there. that is located about a half a mile from Humphrey's still further north. I do not know

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1057 whether or not he has a family. I know a family named Vaughan, consisting of wife and some children. This place from the alfalfa patch is about five or six miles, right on the road. I know of one new settler who has come in recently; he is located just about a half a mile west of Malden's, or it would be about two miles north of

Q. (interrupting.) Do you know any other families between Trancas Canon and east of
1058 Sequit Canon, on the west, to the top of the ridge? A. There is another family up there on the top of the ridge. They are possibly seven miles from the alfalfa patch. There are no others than you have mentioned or I have testified to that I call to mind. I am familiar with the Trancas and Sequit canons; they are deep rough canons. All of those families that I have mentioned have access to the Triunfo
1059 road. The school house up there is possibly a half or three-quarters of a mile north of Decker's place. Charles Decker's place, about three miles north, from the alfalfa patch, probably a quarter or half mile east. That is on the road now used by Deckers, not on the ranch property. It is north of the ranch, the house is possibly a mile north of the ranch on the so-called Triunfo road, on Decker's property. I have had occacion to investigate and ascertain the amount of land which is in cultivation by these various peo-

1060 ple that I have been testifying to between Trancas and Sequit and north of the Malibu. I ascertained how much. All of them in the whole lot in the section mentioned, have, I would judge, something like 330 or 340 acres; that is, these people whose names I have given, all the people mentioned; that will be between Trancas and Sequit.

Cross-Examination

By Mr. Burnell:

1061 By "land cultivated" I mean land that has been sown to some crop. I would not call land that cattle ranges over cultivated land. My answer had reference to the amount of land these people had cultivated in the crops. I have not been over this land myself and measured it. I got my information and knowledge as to the facts that they cultivate about 330 to 340 acres, from what they have said. My information is

1062 just derived from someone else, what someone else has told you. I have no knowledge of it myself, only what they have told me themselves, that they had that amount in cultivation. That information includes information and knowledge as to the number of cattle that they may own. I know how many cattle these people own. I can tell you accurately: They own in numbers somewhere around 30 or 40 head. I know why they don't own more. A good many of them died last winter. I suppose nearly half of the

1063 number that was there last winter died during the drought, last winter. It is not one of the reasons that causes that destruction of cattle that they can not get them in or out; they can get cattle in and out by this Triunfo road. That is the only way open. They take them, to get them out, either up or down the Ventura state highway. The Ventura state highway has a cemented center and dirtway on either side, so the cattle are not forced to travel on cement. I
1064 do not know where is the nearest point from the Decker place where a doctor is located—Oxnard, I guess. If there is any physician in the mountains, I don't know. I do not know Mrs. Elizabeth Haney; I know of her. There are in her family three children, I think. Really I can't say just where her place is located. I have never been to her place. I know her as one of the so-called settlers; she lives away back to-
1065 wards the divide. I don't know just where her place is located. I know Peter F. Roller. I didn't mention Mr. Roller. He is seldom there. He has a place up there. I know why he is seldom there; he is a business man in the city.

Q. Isn't one of the reasons that he cannot drive a machine over this very *step* road? A. He can drive a wagon over it; he can not drive a machine over it.

Q. Do you know whether Mr. Roller owns a wagon? A. No, I think not.

1066 Q. Do you know whether he owns an automobile A. I don't know, I am sure.

Q. Have you seen him driving either kind of vehicle? A. I have seen him driving an automobile. I don't kno whether he owns one or not. I have not seen driving himself; I have seen him riding wi ne one else driving it. I have never seen him driving a wagon. In Mr. Roller's family there is a wife, I think. His place is over in Trancas Canyon. I believe
1067 it is the other side of the line where you mentioned. That is the reason it was not mentioned. I think he is across the line east of Trancas. That place from this alfalfa patch mentioned by Mr. Anderson must be six or seven miles; six miles probably. I mentioned Mr. Vaughan; I said he had a wife and child. His place is located from Mr. Decker about three miles and a half, what I would call north or northeast. All
1068 of these people whose names I have mentioned have access from the respective properties where they live up there in the mountains, to and from those places owned by them, over this steep road from Triunfo post-office; that is the Triunfo road that they use. I do not know the width of that road or the grade. I do not know Mr. C. S. Herron. I have heard of him, but I don't know his place. I do not know where his place is. I know Mr. F. H. Thew. His place is over on the Trancas somewhere in that neighbor-

1069 hood. I don't know how many in his family. I do not know Mr. Arthur Auld. Probably there are a good many of those people that have places there that are never there that I have not seen, and I only called off all the people that I knew that lived there. Some of them I have heard of and have never seen them.

Q. Do you know how many people have places up there in those mountains? And when I say "those mountains" I mean up in the can-
1070 yon by the Malibu Ranch. A. 24 families, I believe it is from Las Flores Canyon to the county line.

Q. Those are families that live there? A. Yes sir.

Q. Do you know how many people own land or are interested in land in that locality who do not live there? A. There are numbers that do not live there that I don't know. I do not know
1071 Mr. William Kelso. I have heard of him. William Kelso's place is away back up about the head of the Trancas, somewhere I think. Louis Berger—if I have the right impression of his place, it is about the divide between the slope towards the valley and the slope towards the ranch. I mean the San Fernando Valley; in other words, he is *an* the crest. I don't know how many in Mr. Burger's family; I think he has a wife and three or four children. I have heard him mention children. His place from

1072 the alfalfa patch Mr. Anderson was talking about must be eight or nine miles. I don't know Mr. Walter Kielhofer. I know C. H. Weiss. I think I met him once. I think he has a place up there near the Trancas. I think it is east of the Trancas. He is not one of the neighbors of the Deckers. I think it is quite far away; I don't know the location of his place. I do not know any one by the name of Lulu Carr. I mentioned Ernest Decker; he has a family of a
1073 wife and child. He is about a mile east of the Charley Decker place; he uses the same road as Charley Decker, and that is the only road he has. I know Ralph Kincaid. Mr. Kincaid's place is by the Trancas Canyon laying just off of the Milton ranch. I don't know how many acres Mr. Kincaid has, or the Kincaid family—I have been up to that place. I can't give an estimate, from my general knowledge of the
1074 facts, of how many acres they have; they own several pieces running off in different directions; a small piece of it is under cultivation.

Q. How many people in Mr. Kincaid's family? A. All that lives there is a hired man; I do not know the hired man's name; he is a one-armed fellow. I know Mr. Keppler. I do not know any family named Malloy; I have heard of it. I don't believe they own land up there in that vicinity; I wouldn't be positive. I have heard of E. M. Smashey as a property owner

1075 up there. I don't know where the place is located. I can't say I know anyone named Moffet. I have heard of Moffet but I can't place whether it was in the mountains or where.

Mr. Burnell: I think that is all.

Redirect Examination

By Mr. Anderson:

Q. This Mrs. Haney, is her place on the north or south side of the ridge or divide? A. Really I can't say. I don't know just the loca-
1076 tion of her place. It is within the location I spoke of between Trancas and Sequit; it is in there. I am not positive as to the house of this Mr. Roller, but he is close to the Trancas, but on which side I am not sure. The distance from Mr. Decker's place to Triunfo post-office is about eight miles, and from Decker's place to the alfalfa patch is about two miles and a half.

(Adjournment was taken until Friday, Oc-
1077 tober 4, 1918, at ten o'clock A. M.)

Friday, October 4, 1918.

ALBERT J. OTIS,

a witness called in behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Newby:

My name is Albert J. Otis. I reside in Los Angeles. My business is building fences, woven wire and barbed wire fences and so forth. I

1078 have been engaged in that business 12 years, individually, as proprietor of the Los Angeles Fencing Company, and during the twelve years I have had occasion to build or contract for the building of fences through ranch properties in this county. I have examined the Malibu Ranch; I went from one end to the other of it in an automobile. As to the line of the proposed highway, Mr. Culver showed me where the road was to be surveyed, and we were on
1079 the road part of the way and where we were not on the road he showed me where it would be built; and afterwards I saw the county map as proposed, the proposed county road, and went over it very carefully from one end to the other, both the main road and the side road or the road that goes up in the canon. From the examination that I made of the ranch property and the proposed highway, I got possession of
1080 sufficient data to express an opinion as to the cost of fencing that rancho, and I have made an estimate of it.

Q. Will you please state, Mr. Otis, the kind of estimates that you made with reference to the fencing needed; that is, the character of the fence? A. I made an estimate of the cost of barbed wire fences I saw on the place; that is, I saw a four barbed wire fence and the fences they are putting up there now were five barbed wire fences; and I made an estimate of the cost

of building a five barbed wire fence; also an estimate of building a woven wire fence, which would be practical for the place. My business is the construction of fences; and as to which is the most practical fence for the place, I would say by all means a woven wire fence, as that is the only fence that would be practical; on ranches where other stock and horses and cattle are raised we generally build woven wire fences, for the reason that they are a great deal more practical. A barbed wire fence in order to make it hog-tight, you have to stretch so many wires that it makes it more expensive than a woven wire. Even for cattle, the cattle stick their heads through the wire and crowd through where there is better feed on the other side of the fence; and therefore a woven wire fence is a much better fence for all purposes of a ranch. In the course of my business I have been called upon to build fences to turn hogs, sheep and cattle; I have built a great many fences for all those purposes, and the persons with whom I have dealt have requested me to recommend the various types of fence that was to be used for those different purposes; I am often asked my opinion as to the most practical fence to be used on a property we are putting a fence on. I have studied the question; it has been my business, building fences. That is my business, the building of

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1084 fences for those difference purposes. My business has been principally the construction of fences, and in that business I have built all kinds of fences and the different characters of fences according to the needs of the place. Generally the purchaser knows the requirements of the place, and as a general thing has a general idea of the requirements as to a fence on the place, and he often advises with me where he is going to employ me to put up the fence, as
1085 to what I think is the best fence to put on the place. I made an estimate of what I think is probably the most practical fence needed for the Malibu Ranch, assuming that the ranch is used for cattle and sheep, and a hog ranch, and horses, considering the cost of materials and labor, specifying a fence that is 52 inches high, of woven wire, and above that two barbed wires, heavy barbed wires about 6 inches apart,
1086 making a fence 5½ feet high. The posts for this fence would be all of No. 1 merchantable rough redwood, the corner and end posts would by 4 by 6, about 3 feet in the ground, well anchored and braced to hold the fence permanently tight. The line posts to be 4 by 4, 16 feet apart. That is the general construction. I made a detailed estimate of the cost of such a fence through the Malibu Ranch, following the proposed route, covering all of the details of

1087 material and labor, as well as I could estimate it. I have such an estimate with me.

Q. Just read the estimate? A. (Reading.) "Estimate of woven wire fence which is to be made up of 4x6, end and corner posts, three feet in the ground well anchored and braced; end posts 6x6; line posts 4x4, two and one-half feet in the ground. This lumber all merchantable rough redwood No. 1. Line posts about 16 feet apart"—they have it six feet here, but
1088 that is wrong, it ought to be sixteen. "Under head of woven wire, woven wire for this fence to be 1452 6" stay, American fence, with two strands of genuine Glidden barbed wire above to make a five and one-half foot high fence, all posts to be creosoted from the bottoms up to four inches above the ground. Estimated as follows: 330—4x4—8 ft. posts, making 3520 feet, at $39 per thousand plus freight and dis-
1089 tributing on the job, $12, making $51 per thousand for the lumber distributed on the ranch—distributed on the job. "That makes $184.98 for the necessary posts and braces to build a mile of straight fence. Where the fence is built without any curves or angles. That is a mile. Now, this estimate on the fence is where it is straight going. 320 rods woven wire at 80 cts. per rod, $256.00; fifty pounds of staples at 7 cts., $3.50; creosote and creosoting, 340 posts at 10 cts. each, $34.00. Two strands of

barbed wire which will weigh for a mile, 720 pounds, at 7 cts., $50.40. Now, for the freight. For the barbed wire, etc. Barbed wire weighs 720 pounds, staples 50 pounds, 320 rods woven wire, 4064 pounds, tools, camping equipment and so forth, 500 pounds, total 5334 pounds, at $6.00 per ton for the freight and $2.00 per ton for distributing on the job, figures $21.33. Now for the labor I estimate that one man can complete one hundred lineal feet of fence per day of this woven wire fence with two barbed wires above, or 53 days at $4.50 per day—$238.50. Now the total for this is $788.71. That is for one mile. Now, we add ten per cent. for overhead expense and profit for the construction of the fence in the field, added to the other, makes a total of $867.58. There is about seven miles of that fence to be built as near as we can make out the estimate, at $867.58 per mile. In addition to that there is about eleven miles of fencing that is on rough ground and where the road curves and goes down into the canyon and so on, and while it is more difficult than straight-of-way, it is not as difficult as some of the work to be done on the ranch; about eleven miles, estimated as follows, in addition to the expense of straight fence which is $867.58, we require extra for above conditions, 20 extra posts, 213 feet at $51.00, $10.86 tar and tarring for twenty posts, $2.00; extra spikes and

1093 nails $1.00,—$13.86. Extra labor—now in this fence the men will build about sixty feet per day day, which gives about 35 extra days labor to build a mile, at $4.50, is, $157.50; add to that ten per cent. profit and overhead, gives a total $1056.07.

Q. Now, Mr. Otis, before passing from that, you said there was about eleven miles of that type of ground? A. Yes, sir.

1094 Q. Was that on the basis of the entire length being 22 miles? A. Yes sir.

Q. You did not figure on both sides of the road? A. I figured there was about sixty miles of fence; you just double this. This is one side of the road; this has got to be doubled because it is on both sides of the road. The same with reference to the seven miles. In other words, this estimate is only for one side of the road.

1095 Q. Now, Mr. Otis, please explain to the court why it is necessary to have extra material where the ground is not level, but where it is rough. A. Where the fence is not a straight fence, it is necessary to brace all—not all, but to brace the principal angles, where the road is also built in curves, and where the fence is not straight, line posts have to be anchored and braced in a substantial manner to keep the wire from pulling them over and that requires extra material that I specified. That extra work en-

1096 tails a good deal of extra labor that I have specified, about 35 days to the mile. There is one more. On the ranch there is about 2½ miles, and then also 2 miles, making about 4½ miles of very rough ground, upon on the high ground about 2½, and about 2 miles where the road is to be built up a canyon, a side road; that would require about 79 days extra per mile more, labor, on the straight fence, or $345.50 and the
1097 posts should be 12 feet apart, because there is so many curves that the posts would certainly loosen up, so that I have specified the posts 12 feet apart. The extra braces and blocks are 30 in number, 30 posts, making 147 extra posts or 1568 feet of lumber, at $51, $80.96; creosoting and tarring these 147 posts at 10 cents, $14.70 for that extra expense, totaling $441.16. Add 10 per cent. overhead, $44.11, making a total for that 4½ miles, each mile to cost $1352.85; and
1098 the distance is 4½ miles for that kind, or one-half the fence—on one side of the road; you have to double it—it would be about nine miles. These prices I have specified for labor and material are the reasonable prices for such material and labor at this time. I also calculated the number of offsets necessary to fence this proposed road. I went over the map carefully and with the help of Mr. Culver I counted all the offsets. I mean by offsets where the right of way is widened for the purpose of cutting

1099 or filling the ground, the right of way is widened at points from 5, 10, 15 feet upward, to as high as 75 feet in a place, and each one of these offsets requires extra end posts, required to be well anchored and braced and so requires extra material and labor, and I have made an estimate of the cost of this extra work. I have figured the extra material for the 5-foot offset, 10-foot, 15, and so on. I can give that to you if you wish. For a 5-foot offset, the price I estimated
1100 $9.91, estimating as follows: One rail extending from one end post to the other, one 3 by 4, 5 feet long, Oregon pine, makes 5 feet of lumber. Two end posts, two 4 by 6's, 8 feet, 32 feet, rough redwood. Two braces, two 4 by 4, 8 feet, 21⅓ feet. Two anchors, two 2 by 3, 1⅓ feet. Two brace blocks, two 2 by 12, 3 feet long, making a total of 71⅓ square feet of lumber at $39, $2.81. Freight at $6 per ton,
1101 cartage at $2; that is, cartage and distributing it on the job, $8 per ton. Figuring the lumber will weight about 3 pounds to the square foot, that makes 72 feet at $12.86. Tarring, 2 posts, 2 braces, 2 blocks, 19 cents each, 60 cents. Staples, spikes and nails 14 cents. Just a moment. It is 20 cts. Labor —one day's labor—they have it here, two barbed wire, one day's labor $4.50, total $9.01. Ten per cent. for overhead and profit, $9.91. Now then, for a ten-foot offset it will

require the same cost as above, $9.91, and the additional length of a rail, five feet, 25 cents. That makes a ten-foot offset cost $10.16. A fifteen-foot offset required two rails, two 3x4, seven 14 ft, rough O. P. Two end posts, two 4x6s eight feet, thirty-two feet rough redwood. Two braces, two 4x4 eight feet, 21⅓ feet. Two anchors, 1⅓ feet, two brace blocks, 2x12 three feet, twelve feet. One line posts. That is, an extra post between the two end posts, one 4x4 eight feet, ten and two-thirds feet. Total 91⅓ feet, and $39.00, cost of the lumber at Santa Monica, $3.56. Freight and cartage and distributing at $12.00, $1.10. Tarring three posts, two braces, two brace blocks, 70 cts. Spikes, nails and staples, ten cts. 75 feet of barbed wire, 5 strand, 15 feet each, 5½ pounds at 7 cts., 36 cts. Labor, 9 hours, about $5.00, $10.82. Add ten per cent., making $11.90. Now, here is the twenty foot offset. Two rails, two 3x4, 10 feet, 20 feet rough O. P.

The Court: Just a moment. I want to save as much time as we can, gentlemen. What is the necessity, or the sense, of requiring him simply to read a document which can be filed here and copied later, and taking up the time now.

Mr. Newby: No need.

The Court: Then it may be considered that he would testify orally as he has written it out,

and the writing may be filed and copied into the record.

Mr. Newby: All right. We would like for the witness to testify to the totals of the various items. A. Yes sir.

Q. We can file that as the testimony of the witness. We will ask Mr. Otis, to please testify to the total amount, in dollars and cents, of these various anchors. A. Yes sir. I might begin at the first. Five foot offset $9.91;
1106 ten foot offset—May it please Your Honor, we have a number here of these offsets as shown on the map also.

Mr. Newby: What I would like, Mr. Otis, is for you to testify to the number of five-foot offsets, the cost of each and the aggregate cost. I have not the aggregate cost before me, but I have now, for instance, five-foot offsets 116 in number, $9.91; ten-foot offsets, 101 in number,
1107 $10.16; 49 of the 15-foot offsets, $11.90; 48 of the 20-foot offsets, $12.37.

Q. That is, each? A. Each, yes, sir. 28 of the 25-foot offsets, $13.81 each.

The Court: Let us get that figure now. It is written in this estimate—here is the estimate on the 25-foot offsets. A. $13.81.

The Court: I will make the change here, gentlemen.

A. 49 of the 30-foot offsets, $14.20 each. Ten of the 35-foot offsets, $15.89; six of the

1108 40-foot offsets, $16.28 each; seven 45-foot offsets, $18.56 each; eight 50-foot offsets, $18.95 each; three 55-foot offsets, $18.65; eight 50-foot; three of the 55-foot, $18.65; one 60-foot, $18.77; one 65-foot, $18.91; two 75-foot, $19.90; making a total of 429 offsets, which make a total expense of $5,480 and some cents. I have not got the cents.

Mr. Newby: You mean $5,098.69.

Mr. Anderson: $5,480.

1109 The Court: Well, which is correct? There is a difference of $400.

Mr. Newby: That $5,480 includes something else. It is simply a matter of calculation.

A. Yes, sir. That is for the offsets that I have read. In addition to that, on Alisos Canyon road there is one 5-foot angle, $9.90; eighteen 10-foot offsets, one 15-foot offset, eight 20-foot offsets, one 25-foot offset, total 29 in

1110 number, figured at $317.46. Also Alisos Canyon road from main road to the beach along the alfalfa field, two 10-foot angles, one 25-foot angle—they call these angles here; I call them offsets—one 30-foot offset, one 35-foot offset, five in number, total cost $64.22. The first total on the largest number that I first read was $5,098.69; the next was $317.46, and the last one $64.22, making a total for the job of $5,480.37 for those offsets; that is, in addition to the other estimate of building the fence, which

1111 is extra work. The first estimate is for a straight fence right along, and these offsets I figured the extra posts and labor and material required in each one of them. These estimates of the offsets include the total number for both sides of the road, following the map of the proposed highway. I followed the map from one end of the job to the other, went through it and added them up as carefully as I could, with the
1112 help of the engineer. And that is the number that I arrived at. I also made an estimate of the cost of a barbed wire fence and not a woven wire. I did not estimate for a four barbed wires; I estimated for the five barbed wires. I have it here. Estimate of cost per mile of fencing, proposed country road through the Malibu Ranch, for the Rindge Company, October 1st, 1918. Posts 4 by 5 by 7, split cedar it is here. They may be either cedar or split
1113 redwood. They cost about the same. At the present time it would be difficult to get the split redwood. The split cedar posts could be obtained, so I am informed by lumber companies handling the material. Posts at 30 cents each, for one mile, these posts 16½ feet apart, 320, at 30 cents, $112. Extra for curves and braces, 20 in number, 7 feet long, 35 cents, $7. Tar and tarring, that means labor—at 10 cents each, $34. Now, for the wire. Five strands of Glidden—that is heavy barbed wire suitable for the pur-

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pose, 5,280 feet in a mile, makes 26,500 lineal feet of barbed wire. That barbed wire goes 14.30 feet to the pound, making 1860 pounds. Staples and spikes 40 pounds, 1900 pounds at 7 cts., $133.00. Freight for the posts,—they will weigh about 8500 pounds—wire and staples, 1900 pounds, camp tools, equipment and so forth, about 500 pounds, making a total of about 10,090 pounds, or five and a half tons, at $6.00 per ton, $33.00. Distributing on the job $5.00, $38.00. Now, the labor for building a mile of fence, 5,280 feet, at 12 cts. per lineal foot, $633.60. Compensation insurance for the men, $16.63. Now, I would like to explain that that price of 12 cts. a lineal foot means the expense of building the fence, not only on the even ground but also on the roughest ground. This is an estimate of the cost from one end of the job to the other, and there are 60 miles of fencing. Ten per cent. for profit and overhead, $90.42. Making our estimate for building a mile of five-strand barbed wire fence, $1,071.65.

Q. Now, approximately what would be the difference between the cost of a five wire fence and a four wire fence? A. Well, there would not be very much difference. It takes about the same posts and about the same labor. It would be somewhat cheaper. I have not estimated that.

Q. It would be the deduction of the strand of

1117 wire? A. Yes, sir, but that would not be a sufficient fence.

Q. You did not figure that, because, in your opinion, it would not be sufficient for the ranch purposes? A. Exactly.

Q. Now, what kind of posts did you use on that? A. Split posts; split redwood or cedar posts. They are approximately the same cost. In my estimate of the five wire fence, the prices that I have given are reasonable prices for labor
1118 and materials that would go into such a fence at the present time. That amount I have charged there for overhead and profit is a reasonable price for such work and superintendence. That is the way we estimate our work all the time. I also made an estimate for the price of farm gates. I have that here. If the road is put through the property it would require a number of gates to let the stock from one side to the
1119 other. My estimate of the cost of building farm gates is $28.09 each installed. These gates would be made like I saw the gates on the ranch, and I think they are a very good gate for the purpose, as good as I have seen, or built. They are made of five pieces of 2x6, 16 feet long—the opening between the gate posts is a little over or about 16 feet, also five 2x6 spiked on each side of the horizontal—I could draw that gate out so I could explain it on the board.

The Court: You may do so.

1120 (Whereupon the witness drew a diagram on the board.)

Q. Now, you have placed upon the board a diagram of the type of gate? A. Yes, sir. There will be five 2x6—16 feet long, and four 2x6 spiked on each side of the long piece of lumber and one from this one here, which would make nine pieces of 2x6 or forty-five pieces,—one 4x4x12 feet, for the staff of the gate, then
1121 one 6x6 of that lumber—and this lumber would all be rough Oregon pine. For those long posts we have one 6x6—16 feet long, about 3½ or 4 feet. Those are the posts that the gate hangs on. It has to be put in deep so that the gate will not sag. 16x68 feet long for the latch post, two braces 4 by 4, 8 feet; two 2 by 12, for the brace blocks. Now then, three hinges at 90 cents each, latch 30 cents, one iron rod to extend from the end of the gate to the staff, $1.25;
1122 225 feet of lumber at 3 pounds to the foot, 765 pounds; iron, 35 pounds. That is about 800 pounds for the gate and the posts and the braces, that it would weigh, making the freight $2.40 and a day and a half labor for a man to build that gate, to make it and install it, to haul the gate there and put it where it is required. The lumber as I have it above, I have it estimated. cost of lumber $5.50, spikes 25 cents, and the posts and braces $4.78, making a total of $23.13. 10 per cent. profit and overhead, $2.31, making

1123 a total for the gate of $25.44, with the addition of a padlock and chain, a padlock suitable as I think for the place, padlock $2, chain 35 cents, total $2.35. Tarring for the posts and braces, 30 cents—but it would be more than that. That makes a total for the gate installed of $28.07, with the padlock and chain. Now, I would say that that estimate is for the barbed wire fence, and that gate would also be used for the woven wire fence, or could be, by adding the woven
1124 wire at the bottom to keep back the hogs, at an additional cost of about 75 cents or $1.

Cross-Examination

By Mr. Vallee:

When I went up on the ranch I went with Mr. Culver. I think he is engaged in the real estate business, he is a property owner here in the city; he is a real estate agent and appraiser. I understood that he was a surveyor and engi-
1125 neer; he seems to be competent to figure the data on this job, and understands the maps and so forth and from his knowledge I gained that he was an engineer.

Q. He is employed by the Rindge Company?

Mr. Anderson: So stipulated.

Q. By Mr. Vallee: You went up from the road—did you go over that road on foot? A. No, sir, I went over the ranch road, which very nearly parallels the proposed road, in an auto-

1126 mobile, from one end of the ranch to the other, and back.

Q. At any time did you get off the main ranch road? A. Yes, we were off the main ranch road—at one point he drove up on the point, where we could see where the new road was to go down the beach—this is all. My knowledge of the road that was to be built was from traveling over the ranch, on the ranch road in an automobile—that is right. I didn't go

1127 back into the mountains at Los Alisos Canyon, nor into the canyons between Encinal Canyon and Sosto Canyon.

Q. You don't know of your own knowledge how many offsets there are in the road up in that district? A. I could look up the canyon. I have built a good many fences up these canyons, up Beverly Canyon, Fish Canyon, and back of Eagle Rock, and I have a good idea of the

1128 necessary work required to build a fence on a road up a canyon.

Q. In these canyons back of Beverly, did you build a woven wire fence up there, of the kind you have described? A. I built a woven wire fence in a number of places very similar to where this road is to go, about the same kind of woven wire fence; I would say the same kind; they may not be exactly, but practically the same kind; a 5-foot woven wire fence. I have built some fences similar to the one I have speci-

1129 fied, in many instances, in the mountains, over the mountains, in canyons and across them.

Q. The question was did you ever build a fence similar to the one you have described here, with two barbed wires at the top and a woven wire, on any ranch? A. Yes, sir, I have. I remember one I built quite recently and another one that I built with one barbed wire, just exactly like this fence, yes, sir. I have built what I would call a good many fences. I don't know
1130 what you mean by a good many or a great many; yes, I have built about twelve hundred fences in and about Los Angeles, besides repair work that I did not keep account of. I have built a good many miles in the mountains. I worked all summer back of Beverly building a fence for Mr. Doheny, up and down the mountains and over the ridge. And for Mr. Wiley, and one for Doctor Harris up in Fish Canyon, and one in Laurel Canyon, and I built a number of
1131 fences—I built a fence for Mr. Kim, and I built a fence for Mr. O'Melveny, the lawyer, and I built a great many on rough grounds. The first summer I was here I put in all summer building a fence in Eagle Rock Valley, up on the mountain side, and I have a good idea of the labor required to build a fence in the mountains.

Q. Out of these many hundreds of fences you have built on ranches, and through canyons, there was only two of them that were simi-

1132 lar to the one that you have described here, of woven wire, with two barbed wires at the top—is that correct? A. No, sir, I didn't say that. I said I remembered building two fences like the one specified here. I built a number of fences that are about the same. There are a good many different sizes of wire, types of wire, in building fences, and different weaves of wire fence. Sometimes we put one wire above, some-
1133 times two; sometimes three or four. Sometimes we build fences on iron posts, and sometimes we set them in concrete. I could build a good many fences and have a good knowledge of fences in the mountains, and not build this particular kind of a fence. I don't think I built very many miles of five barbed wire fences. I think generally they were woven wire fences. They are not a practical fence for the mountains, I don't believe, as they are hard to put
1134 up and keep the posts straight and hard to break the posts so that they won't fall down, and it is hard to keep the posts permanently plumb, so as to hold the wire tight. A woven wire fence in the mountains is a much better fence, and that is one reason why they generally build them in the mountains. I know that the railroad companies build the fences on their right of way this way, and those fences are built for the purposes I have specified, and they build a great many miles. I built such a fence or a similar

1135 fence, a woven wire fence similar for Mr. Trowbridge, about two miles from Chino, and that fence was a stock fence of woven wire, two barbed wires above and I also just finished one for the George Junior Republic, a fence for their cattle and hogs, it was 51 inches high, woven wire, with one barbed wire above. Also recently I built a fence for Mr. Hopkins, near Pedley, twelve miles this side of Riverside, three miles of fence, hog and cattle fence, woven wire
1136 hog fence, with barbed wire above, and I built a number of fences around Anaheim, around the orange groves. We fenced in forty acres for Mr. Trowbridge up at Chino; for the George Junior Republic about a mile of fence. For Mr. Hopkins about three miles. Mr. Trowbridge's ranch has cattle on it and we put two barbed wires at the top. The George Junior Republic was for cattle and hogs; one barbed wire at the
1137 top. At Mr. Hopkins they haven't any cattle yet, but they are going to put it in. It was for the purpose of stopping cattle and hogs; two barbs we put on there.

Q. Can you name any others besides those three, with cattle ranches, where you built such a fence? A. I built a number of fences for that purpose. I don't recall to mind at this moment.

Q. Isn't that fence, the fence you have described, isn't such a fence, is it, as is ordinarily,

and a great majority of cases, used upon a cattle ranch? A. This fence, as I have specified, is a good substantial fence, and is, in my opinion, a good substantial fence to build; it is a good fence, and a good fence is the most practical fence to build for a cattle ranch. Barbed wire fences are not as good a fence. They are much more easily gotten out of repair and cattle put their heads through the wires and strain them and stretch them until the wire is out of shape. If you will take notice you will see that the barbed wire fences throughout the country are patched and repaired and are fixed up so as to keep the cattle from getting through, where as a woven wire fence makes a permanent improvement. And I would also say in answer to your question—you seem to have the idea that this is an extra good fence, and I would say it is not, not as good a fence as the railroad companies build on their right of way. They place the posts 8 feet apart and in many cases they put a 1x6 from post to post and put barbed wires above and below and so make a fence that is even better than the one I have specified, for cattle.

The Court: What is the object of putting two barbed wires on top of the woven wire fence—to make it more secure? What is the object of putting on two barbed wires? A. The woven wire makes a close mesh fence that the

1141 small animals cannot crowd through, and the animals do not put their heads through it to get the feed on the other side; and the idea of putting barbed wire on the top of the fence is to make it more formidable so when they put their heads over there they get hurt on the barbed wire and they do not do it as much as they would if there was no barbed wire above the woven wire. It takes the principal strain when they try to reach over or jump over the fence
1142 and it adds to the height of the fence also. The barbed wires deter the animals from sticking his head through and from jumping over. I think it adds very much to the efficiency of the fence to put a barbed wire over the woven wire. I think a woven wire is necessary down below, especially where there are hogs and sheep and small animals, goats and small young stock. Young stock will crowd through a five wire bar-
1143 bed wire fence very easily—not very easily, but they will do it.

The Court: I have just one more question: Why wouldn't one barbed wire suffice, on top of the woven wire, instead of two? A. I have specified the fence as 52 inches high, and I put the barbed wire six inches above the woven wire and another barbed wire six inches above that, and then you get a fence that is about five and a half feet high, and there is no space where the cattle can stick their heads through and so crowd

1144 the wire apart and strain it out of shape. It makes a better fence.

The Court: The only desirability, then, is in the height of the fence—the only advantage of the two barbed wires? A. Well, that is the principal advantage, and the other advantage is horses will put their heads—if you put only one barbed wire on, horses will try to put their heads through the fence and crowd it out of shape. If
1145 they get mangy they want to scratch up against it, and if there is a barbed wire or two above the woven wire, they are inclined to leave it alone.

The Court: I cannot see the object of having the two wires. Is a horse more apt to stick his head through the fence if there is only one wire than he is if there are two on top of the woven wire? A. You see, if the woven wire sags any, it is pretty easy for them to crowd it
1146 over. There are no barbs there, and it does not hurt them.

The Court: There is a barb on this fence on top of the woven wire fence. What is the advantage of the additional wire, if there is any advantage? A. Well, there would be a space of about a foot between the woven wire and the barbed wire if we left off one barb wire.

Mr. Vallee: Did you see any of the kind of fence you have prescribed here upon the Malibu Ranch at the present time when you were up

1147 there? A. Not exactly like it, no sir. I saw something near like it. I saw where they are raising hogs there. I saw a barbed wire fence with woven wire stretched along the ground to keep the hogs in. I think that was the regular hog wire; I would say about 26 inches.

Q. And that is all that is necessary, is it, to turn hogs? A. The higher the fence is the better for turning hogs. It is better than a 26
1148 inch fence. Unless you have a barb wire above the 26 inch fence, they are apt to crowd through. It makes a much better fence and much more practical fence. If I was putting a fence in for myself, after my experience in building fences, I would build just such a fence as I have specified. Then I would have a fence that would turn any and all kinds of stock that were put in the field. It is often a great advantage in a ranch to put horses in a pasture that ordinarily
1149 is used for hogs, and so on. On a stock ranch it is a great advantage, and it is a necessity to have a fence that will turn any kind of stock that is raised on that ranch, in my judgment.

Q. A fence with a 26 inch woven wire fence at the bottom and barb wire from there up will turn hogs and will do for a general ranch, will it not? A. Well, their fences there, except the new fences they have put in, the barb wire and woven wire fences, show that a great deal of repair work has had to be done on them to keep

1150 them up. Like every other stock ranch where no woven wire is used—if no woven wire is used, in course of time the cattle crowd through the fences and strain the wires, so they become loose, and then they have to be gone over and repaired.

Q. That is true about any kind of fence, isn't it, that you have to do with, in time? A. Not so much on the fence I have specified, be-
1151 cause it is a substantial fence and will answer the purpose without much labor in keeping it up. Another thing, a fence on a ranch where it is not a very substantial fence, cattle when they get through occasionally, it requires the extra expense of keeping some one riding the fences all the time, and that means a great deal of extra expense, and then the loss of time that is entailed in going after cattle and bringing them back and putting them in the field, and
1152 then sending another man or men out to repair the fence—that is a great nuisance and a great expense. I know that because my father had a ranch and raised cattle, and I was on the ranch and know of the trouble and expense of repairing fences. I know the advantages of a good fence around property. I did not see any other woven wire fence on the Rindge Ranch besides what was used to turn hogs. The only hog fence I remember, woven wire fence, was down where they was raising hogs. That was only a

1153 small part of the total fencing I saw. I noticed that the new fences they were putting in there were all five wire barbed wire fences. I did not notice that all the old fences that had been put in there was four barbed wire fence. I noticed a great many of them were five barbed wire fences, and in some cases they had six or seven barbed wires on to keep the stock back, and even then they were out of shape. Where the fences were in a place where the cattle crowded down
1154 to get through, they have strung more than five barbed wires; they have strung extra wires, and then they were all loose, showing the cattle had crowded up against them and caused them to be out of repair and in bad shape.

(Stipulated that the witness was employed by the Rindge Company to make these estimates.)

There was no agreement or understanding between me and the Rindge Compnay or between
1155 me and Mrs. Rindge, or any one connected with the Rindge interests, that if this fence had to be built that I would get the contract to build it. I don't know that the woven wire fence would cost any more than the barbed wire fence in that ranch the way I have estimated it, because I have not—I have made it on woven wire. I gave an estimate of three different prices, and I have not figured that out to know whether that fence at those prices would amount to more than the barbed wire would cost. It

might cost more. If it did, there would not be very much difference I don't think.

The Court: Take a lineal foot of wire for fencing, Mr. Otis, what is the difference between the cost of fencing with that five barbed wires and the cost of fencing it with a 26 inch woven wire in height and two barbed wires? A. The difference between a five barbed wire fence and a woven wire 26 inches high, and then say two or three strands above it?

The Court: No, the one you specified. What is the difference between the cost of a foot of that fence and a foot of five barbed wire? A. A five barbed wire fence would be a little cheaper; I couldn't say how much cheaper without figuring it out. I have not figured it out. The wire would be less expensive, but the labor is more expensive. It takes more labor than to put in the woven wire, because you have to go over the ground and string out the fence five times. If anything it would be less labor to put up the same height fence with woven wire than barbed wire.

The Court: Don't you think the additional time that would be consumed in putting up the five different lines would be consumed in straightening out the woven wire so as to properly adjust it? A. I think one would about offset the other. About what you would save in the difference in the cost of wire you would save in the labor. I

don't know exactly about that. The woven wire, where it can be stretched out in long stretches on a straight road—you can stretch 40 rods in a row; that is 660 feet. That can be rolled out and stretched up at one stretch; and then you have the labor putting the barbed wire above. Now if you are stretching out five barbed wires, you have to distribute the five barbed wires and space them on the posts carefully so as to get them spaced about right, and staple each individual wire. Where the wire is put on around the curves like it would be required to put on this job, many miles of it, the woven wire would stand up better than the barbed wire, for the reason that if you start to stretch a barbed wire fence and you stretch one wire and get it tight, and then you start to stretch another wire and a third wire, the first one will begin to get loose because the posts will give a little and you have a poor job; whereas, a woven wire, you pull it up at one time and the strain all comes on at one time like. You can put it up in better shape.

The Court: If you are coming back this afternoon I wish you would make a calculation, if you will, as to the difference in cost per mile of five barbed wire fence and the one that you have specified. A. Yes sir.

Mr. Vallee: The witness stated that he made no estimate on the four barbed wire fence. He may, during the noon hour, give us that.

1162 The Court: Yes, you may do that.

Mr. Newby: We join in that request.

By Mr. Vallee: My estimate included the creosote and creosoting of the posts. About 3 feet of each post I would creosote. That would come about 6 inches above the ground on the line posts. A good many of those posts have to go in on the hillside, and the ground would be high on the high side of the post, and if dirt gets down against the post, it would rot it there. I
1163 think it is well to creosote the posts above the ground level 4 to 6 inches, and that is why I generally creosote them higher than the ground. So I have specified here 4 inches above the ground.

Q. Now, without going into detail, isn't it a fact that only the extraordinary and not the ordinary fence, that the posts are creosoted on a big large cattle ranch such as this—or ranch,
1164 rather? A. I see they are creosoting the posts up on the Malibu Ranch, the posts they are putting in now. I saw a big pile of posts there that were creosoted and tarred; but this is a different thing. It is tar, which is about the same expense. I don't know how much it adds to the life of the post to creosote it or tar it. From what I have seen and know about it, I think it does add to the life of the post to treat it with coal tar. I have seen fences where the posts were tarred that have been in for 20 years and

were in good repair. I have taken notice of that. I have seen fences also where the fences were not tarred that had not rotted out in a number of years. Again, I have noticed that redwood posts where the lumber is cut out of the top of the tree, like lumber will rot away very soon, within a few years, even if they are tarred. I do think that tarring posts adds to the life of them. I think that is a generally accepted fact. I generally, in specifying the work, or specifying the manner of fencing we should build—I almost always creosote the posts. That is what I specify. The owner generally leaves it to me how it should be built, if he does not know how. He relies on my judgment and when he does I specify that the posts shall be creosoted. The posts I have estimated are eight feet long. The posts I saw on the ranch were split posts, seven feet long. They are 4x5, and consequently have more bearing against the ground and do not have to be placed so deep in the ground as a post of smaller diameter. There is a difference in the cost of 4x5x7 than there is a 4x4x8. The post is a foot longer and costs more in proportion. The split posts for fences are generally made four by five, and the sawed lumber we generally use a 4x4 and then we place a post—where we use a 4x4 we put it a little deeper into the ground so it has more resistance against the ground. Most fences of this character only use posts 7 ft. long if they are 4x5. You couldn't build this fence with 7 ft. posts. They would not be long enough. They are using 7 ft. fences there now,

1168 but I explained to you they were split posts 4x5. I estimate the cost of labor, in my estimate of the woven wire fence, $4.50 per day on an eight hour day. I estimate that the men will be on the work actually eight hours. My estimate on the barbed wire fence was on a different basis for the labor. The barbed wire fence I estimated the job from one end to the other; that is straight easy going where the fence would be put in, and it would take less labor—I estimated that that would about even up where there
1169 was a good deal of labor, so I estimated the total expense at about 12 cents a foot; whereas, the woven wire fence I segregated the cost of the fence and divided it into three different estimates and estimated the labor accordingly. In my estimate of the barbed wire fence I include compensation insurance, $16.63. In my estimate of woven wire fence I include no estimate of compensation insurance as there is a good deal more hazard in putting in a barbed wire fence than there is a woven wire fence, and though
1170 we carry insurance on all the workmen too, I simply didn't add it.

The following is a copy of defendant's exhibit 4 which the reporter was instructed to copy into the record:

Estimate on woven wire fence which is to be made up of 4x6 end and corner posts 3 ft. in the ground, well anchored and braced; gate posts 6x6; line posts 4x4 2½ ft. in the ground. This lumber all merchantable rough redwood No. 1. Line posts placed about 16 ft. apart.

1173 1172 1171

WOVEN WIRE:

The woven wire for this fence to be:

1452 6″ stay: American fence with two strands of genuine Glidden barbed wire above to make a 5½ ft. high fence. All the posts to be creosoted from the bottoms up to 4″ above the ground. I estimate it as follows:

330 4x4-8	3520′	
Extra 10 4x4-8	107′	
	3627′ at $39 plus freight and distributing on the job, $51.00	$ 184.98
320 rods woven wire at $1.80		256.
50 lbs. staples at $.07		3.50
Creosote and creosoting 340 posts		34.
2 strands barbed wire 720 lbs. at $.70		50.40
FREIGHT		
Barbed wire, 720 lbs.		
Staples 50 lbs.		
Woven wire 320 rods, 12.7 lbs. to the rod, 4064 lbs.		
Tools, camp equipment, etc., 500 lbs.		
5334 lbs. at $6.00, freight $2.00, distributing per lb.		21.33

1176 1175 1174

LABOR

1 man completes 100 ft. of fence per day, 53 days at $4.50 per day		238.50
		$ 788.71
10% overhead and profit		78.87
	About 7 mi.—	$ 867.58

Estimate of fence for the ground that is rough and where the road is over uneven ground and where the straight stretches are less than 500′.

Level ground		867.58
Extra for above conditions		
20 extra posts 213 ft. at $51.00	10.86	
Tar and tarring	2.	
Extra spikes and nails	1.	13.86

Extra labor

100 ft. 53 days as allowed

In this fence the men will build about 60 ft. a day;

1179	1178	1177
88 days, or 35 extra days labor at $4.50 per day		157.50
		1038.94
	10% overhead and profit	17.13
		1056.07
4½ miles of very rough ground:		
79 extra days at $4.50 per day		345.50
Posts for this fence should be 12 ft. apart, requiring about 117 extra posts.		
Extra braces and blocks, 30 posts:		
147 posts, 1568 feet at $51.00		80.96
Creosote and tarring		14.70
		441.16
	10% overhead and profit	44.11
Extra expense more than to build a fence on level ground, as estimated		867.58
		1352.85

1182 1181 1180

ESTIMATED COST PER MILE OF FENCING PROPOSED COUNTY ROAD THROUGH THE MALIBU RANCH

By A. J. Otis
Los Angeles Fencing Co.

RINDGE COMPANY — Oct. 1st, 1918.

Posts—4" x 5" x 7"—split cedar at 30 cts.			112.00
16⅔ ft. apart—320			
Extra for curves & braces 20—7' at 35 cts.			7.00
Tar and tarring	at 10 cts.		34.00
Wire—5 strands Genuine Glidden, 5 x 5280' (say 5300)—26500'			
26500—(14.20' to llb.) 1860 lbs.			
Staples and spikes 40 1900 at 7 cts.			133.00
Freight—340 posts at 25 lbs. 8500 lbs.			
Wire—	1900 lbs.		
Camp tools, etc., 500 lbs.			
10900 say 5½ tons at 6.00		33.00	
Distributing, etc.		5.00	
			38.00

398

1185 1184 1183

Labor—5280 12 cts. 633.60
Ins.—633.60 at 2.25 16.63

974.23
10% 97.42

Price $1071.65 1071.65

ESTIMATE ON GATES
For Proposed Road Through Malibu Ranch

Rindge Company, Oct. 1st, 1918.

Gates 25.44
Padlock 2.00—3'—3-8 chain 2.35
Tar for posts & braces .30

28.09
Add hog wire .75

28.84

5—2x6 —16=80 O. P.
9—2x6 — 5=45 "

1188	1187	1186
1—4x4 —12=16 " 141 at 39		5.50
1—6x6 —10 R. R. 30		
1—6x6 —16=48 Spikes		.25
2—4x4 — 8=21 ⅔		
2—2x12— 3=12		
4—2x3 — 1 1—2—2 114 at 42		4.78
3 Hinges—90 cts.—Latch 30 cts.—Iron 1.24		2.45
255 ft., weights 3 obs.—765 lbs.		
Irons Freight 35		
	800 lbs.	
800 lbs.		2.40
1— —Labor		6.75
Haul to job		1.00
		23.13
	10%	2.31
		$25.44

NUMBER OF ANGLES IN PROPOSED MALIBU ROAD FROM COUNTY SURVEYORS' MAP
In Complaint
Also Cost Per Offset.

5′	angle	116— 9.91
10′	"	101—10.16
15′	"	49—11.90
20′	"	48—12.37
25′	"	28—13.81
30′	"	49—14.20
35′	"	10—15.89
40	"	6—16.28
45	"	7—18.56
20	"	8—18.95
55	"	3—18.65
60	"	1—18.77
65	"	1—18.91
75	"	2—19.90

429

Los Alisos Canyon Road

Posts 12′ apart
40 extra curves and braces

5′	angles	1
10	"	18
15	"	1
20	"	8
25	"	1
		29

Length 9600

Los Alisos Canyon Road from main road to Beach. Alongside alfalfa field.

10′	angles	2
25	"	1
30	"	1
35	"	1
		5

Length 2400

Number of Offsets and Size of Each

As per County Supervisor's Map of Proposed Malibu Road & Laterals.

5 ft.	10 ft.	15 ft.
4—Los Flores	2—Malibu Pt.	2—Malibu Pt.
6—Wharf	3—Winter Canyon	4—Winter Canyon
1—Malibu Pt.	5—Marie Canyon	2—Marie Mesa
4—Winter Canyon	2—Marie Puerco	2—Marie Puerco
6—Marie Mesa	6—Puerco Flat	2—Puerco Flat
5—Puerco Flat		2—Corral Canyon
3—Marie Canyon	5—Corral Can.	3—Sosto
1—Sosto	1—Sosto	
2—Estcondido	2—Escondido	3—Escondido
3—Ramirez Mesa	1—Marsh	1—Ramirez Mesa
6—Ramirez Canyon	10—Ramirez Mesa	2—Ramirez Canyon
21—Zuma Mesa	23—Zuma Mesa	8—Zuma Mesa
1—Dume Canyon	1—Dume Canyon	1—Dume Canyon
17—Beach	7—Beach	3—Beach
1—Trancas	4—Trancas	4—Trancas
4—Encinal	2—Encinal	2—Encinal
8—Encinal Flat	5—Encinal Flat	2—Encinal Flat

1200	1199	1198
1—Lechuza	1—Bridge Canyon	
4—Los Alisos		
7—Nicholas	1—Nicholas	
2—Mesa	2—Reynolds Camp	
1—Reynolds C.		
6—Sequit	1—Sequit	
1—West Beach	1—West Beach	
25 ft.	30 ft.	
2—Carbon Can.	2—Malibur Pt.	
4—Winter Can.	4—Crossing Malibu Creed	
1—Puerco Flat		
2—Corral Canyon	2—Marie Canyon	
3—Sosto	3—Puerco Flat	
2—Escondido		
2—Marsh	3—Corral Can.	
1—Ramirez Mesa	3—Sosto	
3—Zuma Mesa	4—Escondido	
	1—Ramirez Mesa	
	2—Zuma Mesa	

2—Bridge Canyon
6—Los Alisos
2—Nicholas
2—Little Grand
1—Reynolds Camp
7—Sequit
3—West Beach
2—County Line
20 ft.
2—Winter Canyon
2—Winter Canyon
1—Marie Canyon
1—Puerco Flat
4— " "
3—Corral Canyon
4—Escondido
2—Ramirez Mesa
3—Zuma Mesa

6—Beach

3—Trancas Beach
2—Encinal
2—Encinal Flat
2—Bridge Canyon
2—Los Alisos
2—Nicholas

4—Little Grand
2—Reynolds Camp
1—County Line

35 ft.

2—Puerco Flat
2—Corral Canyon
2—Sosto
1—Escondido
1—Bridge Canyon
1—Los Alisos
1—Zuma

1—Encinal
1—Bridge Can.

1—Los Alisos
1—Nicholas
1—Reynolds Camp
2—Sequit
1—County Line

40 ft.

1—Puerco
1—Marie
1—Puerco Flat
1—Sosto
1—Lechuza

4—Dume Canyon
1—Beach
1—Lechuza
4—Trancas Beach
5—Encinal

4—Los Alisos
1—Nicholas
2—Sequit
1—County Line

45 ft.

1—Marie
1—Puerco
2—Sosto
1—Bridge
1—Reynolds Camp

1206

50 ft.
1—Winter
3—Sosto
1—Bridge
2—Lechuza
1—Nicholas Flat

55 ft.
2—Puerco Flat
1—Reynolds Camp

1205

60 ft.
1—Nicholas Flat

1204

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65 ft.
1—Puerco Canyon

75 ft.
1—Puerco Canyon
1—Corral Canyon

Los Alisos Canyon Road North
Length 9600 ft. (about)

5 ft.	10 ft.	15 ft.	20 ft.	25 ft.
1	18	1	8	1

Los Alisos Canyon Road South to the Beach from the Malibu Main Road.
Length about 2400 ft.

10 ft.	25 ft.	30 ft.	35 ft.
2	1	1	1

Posts 12′ apart, 40 extra for curves & braces.

ESTIMATE BY A. J. OTIS FOR RINDGE CO. JOB.

Oct. 2, 1918.

5 ft. Offsets—Require.....Price .....$ 9.91
1—Rail—1—3x4—5 R. O. P.
2 End Posts 2—4x6—8 =32 R. R.
2 Braces—2—4x4—8 =21 1/3
2—Anchors 2—2x3—1 1/3 = 1-1-3
2 Brace Blocks 2—2 x 12—3=12

71 2-3

72 ft. at 39.00 2.81
Freight $6.00 per ton
Cartage on Job 2.00 per ton

$8.00 " " —1000 ft. 3000 lbs.
3000 lbs. at 8.00 ton—12.00
72'—$12.00 .86
Tarring—2 posts, 2 braces, 2 blocks .60

Staples, spikes, nails,	.20
2′ barb wire	4.50
	9.01
10% overhead & profit	.90
	9.91

10 ft. Offset—Price $9.51

Require same as 5 ft. offset	9.91
Except the rail is 5 ft. longer—5 ft. at	.25
	10.16

15 ft. Offset—Price—$11.12

	Require
2—Rails	2—3x4 —7—14—R. O. P.
2—End Posts	2—4x6 —8—32—R. R.
2—Braces	2—4x4 —8—21-1/3 "
2 Anchors	2—2x3 —3— 1-1/3—1-1/3
2 Brace Blocks.	2—2x12—3—12
1—Line Post	1—4x4 —8—10-2/3
	91-1/3

91–1/3 ft. at 39	3.56
Freight & cartage 91–1/3 ft. at 12	1.10
Tarring 3 posts, 2 braces, 2 brace B	.70
Spikes, nails & Staples	.10
75 ft. barb wire—5–1/4 lb. at 7¢	.36
Labor—9 hrs	5.00
	10.82
Add 10%	1.08
	11.90

20 ft. Offset—Price $12.37.

Require—

2—Rails	2—3x4	—10—	20—	R. O. P.
2 End Posts	2—4x6	— 8—	32—	R. R.
2 Braces	2—4x4	— 8—	2–1/3	"
1—Line Post	1—4x4	— 8—	10–2/3	"
2 Anchors	2—2x3	— 3—	1–1/3	"
2 Brace Block	2 2—2x12	— 3—	12	

97–1/3 at 39

Frt. & Distributing 12—51—	4.96
Tarring 3 posts, 2 braces, 2 blocks	.70
Spikes, nails & staples	.10
100 ft. Barb wire—(14.30)—7 lb. at 7¢	.49
Labor—9 hrs	5.00
	11.25
10%	1.12
	12.37

25 ft. Offset—Price—$14.14

3 Rails	3—3x4	—8—	24	R. O. P.
2—End Posts	2—4x6	—8—	32	R. R.
2 Braces	2—4x4	—8—	21-1/3	"
2—Line Posts	2—4x4	—8—	21-1/3	"
2—Anchors	2—2x3	—1-1/3	1-1/3	"
2—Brace Blocks	2—2x12	—3—	12	

112—39

1221	1220	1219
Freight & Ctg. at 12	12	
	51	
Tarring 8 posts & blocks		5.71
Spikes, staples & nails		.80
125 ft. Barb Wire—9 lbs. at 7		.10
Labor 1–1/4 days at $4.50		.63
		5.62
		12.86
	10%	1.28
		14.14

30 ft. Offset—Price $14.50
Same as 25 ft.....$14.14
Add 5 ft. Rail..... .25
2 lb. Barb Wire..... .14
$14.53

35 ft. Offset—Price—$15.90
4—Rails .....4—3x4 —9—36 R. O. P.

1224 1223 1222

2—End Posts ....2—4x6 —8—32 R. R.
2—Braces .....2—4x4 —8—21-1/3 R. R.
3—Line Posts....3—4x4 —8—32 "
2—Anchors ....."—2x3 —1-1/3—1-1/3 "
2—Brace Blocks—2—2x12—3—12

134-2/3

135′ at 51	$ 6.88
Tarring 9 posts & blocks	.90
Spikes, staples & nails	.14
175—Barb Wire—13 lb. at 7¢	.91
Labor—1-1/4 day	5.62
	$14.45
10%	1.44
	$15.89

40 ft. Offset—Price—$16.28

Same as 35 ft	$15.89
Add 5 ft. rail	.25
Add 2 lb. Barb Wire	.14
	$16.28

45 ft. Offset—Price—$18.56

5—Rails—	5—3x4—9	45 R. O. P.
2—End Posts	2—4x6—8	32 R. R.
2—Braces	2	
4—Posts—	5—4x4—8	64
2—Anchors		1–1/3
2—Brace Blocks		12
	154 at 51	7.86
Tarring 10 posts & blocks		1.00
Staples, spikes, nails		.14

1280	1229	1228
16 lbs. Barb Wire....at 7¢		1.12
Labor—1-1/2 day		6.75
		16.87
	10%	1.687
		18.557

50 ft. Offset....Price $18.95

Same as 45	$18.56
Add—5 ft. Rail	.25
Add—2 lbs. barb wire	.14
	$18.95

55 ft. Offset—Price $18.63

2—End Posts	2—4x6 —8	32
4—Braces		
4—Line Posts	8—4x4 —8	85-1/3
2—Anchors		1-1/3
4—Brace Blocks—	4—2x12—3	24
	143	at 51— 7.29

	1233	1232	1231
Tarring 4 Braces, 4 Blocks, 6 Posts	at 10¢		1.40
Spikes & Staples			.10
55 ft. x 5—20 lb.	at 7@		1.40
Labor—1-1/4 day			6.75
			16.94
	10%		1.69
			18.63

60 ft. Offset....Price $18.77
Same as 55 ft.....$18.63
Add 2 lb. Barb Wire..... .14
$18.77

65 ft. Offset—Price $18.91
Same as 55.....$18.63
Add 4 lb. Barb Wire..... .28
$18.91

1236		1235	1234
75 ft. Offset....Price $19.90			
2—End	2—4x5—8.... 32		
4—Braces			
5—Line Posts—	9—4x4—8.... 96		
4—Brace Blocks	24		
2—Anchors—	1–1/3		
	153 at 51		7.80
Tarring 15 Posts & Blocks			1.50
Spikes and Staples 2 lb			.14
75 x 5—375 ft. Barb Wire—27 at 7¢			1.89
Labor—1½ day—			6.75
			18.08
		10%	1.80
			19.88

1237 Afternoon Session, 2 o'clock P. M.
(Jury all present and in the box.)

ALBERT J. OTIS,

recalled.

By Mr. Newby: I made the calculation requested by court and counsel during intermission.

Q. I will first ask you then to state the difference in cost between a fence constructed of
1238 five strands of barbed wire and such fence as you specified this morning, per mile. A. I estimated it would make a difference, on the level ground of barbed wire of about $22.00—I am not able to submit that without I find that paper. I put it away very securely. I started from the office with it. I haven't got that information with me, but I will get it.

Cross-Examination

1239 By Mr. Vallee:

In my estimate I did not figure any discount on carload lots of wire up there. I find in contracting that we generally have enough things we don't figure in to make up for all the discounts that we gain by getting it in carload lots or otherwise. That is on the woven wire; there is a discount on all this wire. The difference between what we pay for the material and what I have estimated at here is our profit on the material. We get a discount on all the materials

1240 that we buy in quantity; the price that I figured here for the material is what I consider a fair price to sell the material for this job. I have, of course, taken into consideration that it is a large job. I mean by that that in making up this estimate and placing a figure on what is used in the job, I have taken into consideration the discount, and allowed discount—instead of a lump sum at the end, I have allowed it in
1241 figuring the particular items used.

Q. Now, you made a statement this morning about constructing a fence upon the Rindge Ranch at the present time. Do you know what kind of a fence that is? A. That I saw there that is being constructed: I spoke of having seen a fence that was lately constructed. I saw a fence which they had recently constructed on the ranch; I also saw a pile of fence posts there that had apparently just been dipped in coal tar,
1242 that is all I saw. The fence had five barbed wires and 7 foot posts. I don't know anything about how much it is costing the Rindge Company at the present time to put up that fence. I think that the fence—well now, I don't know what kind of help they are using, what they are paying for wages, or what they are paying for the material, so I couldn't hardly say what is the cost of that fence—if it is old material—I don't know anything about the material, I saw

1243 the material there, the posts seemed to be fairly new, they were not weather stained very much; it seemed that they had not been there very long; they were not weather stained. That is all I know about it.

The Court: Where was that fence, Mr. Otis? A. Well, we had been pretty well up to the other end of the ranch, as I remember it, it was down before we got to the hog place, before we
1244 got to where they are raising hogs.

The Court: That is not up in the other end of the ranch. A. I speak of that because we drove through.

The Court: Was it this side of the hogs? A. That is my remembrance, but I could not state positively where the fence was; the ranch is 21 miles long and we rode up in a machine and back.

By Mr. Vallee:

1245 Q. Isn't $500 a mile a fair estimate of the fence which they are constructing at the present time there? A. The fence I saw there that is being built is a straight fence and would not require extra material or extra labor as a fence would cost on this road, and could be possibly be built for $500 a mile; but that would be a lower estimate than I would consider a fair price for a man or a concern to go and build a fence. My estimate has included a price of building the fence on straight even stretches,

1246 and also the price of building a fence where it is difficult, around the curves and in the ravines, and also about four miles and a half where it would have to be built on what I would call in the mountains, which requires a great deal of extra labor and some extra material. I think that my estimate on the woven wire fence that I have specified to be built at the present time, from one end of that ranch to the other, and be done in a thorough and workmanlike manner,
1247 that would be acceptable to the owners, or anyone else paying the price for the fence—I think my price is a fair, reasonable price.

Q. You said this morning that it was much more difficult to stretch the barbed wire fence than it was to stretch a woven wire fence? Isn't it a fact that when a barbed wire fence is stretched on the level, the wagon usually goes along with the three wires, stretching out from
1248 behind, and those wires are pulled tight to the fence posts, and the three wires are stapled at the same time by the same man—I mean the three wires are up, and a man staples the one at the top and then the one at the bottom, or which ever way it is done. Is that a fact? A. No sir, I don't think it is. In a measure you are right. Where that ground is level and nothing in the way, it is possible to put three wires of barbed wire, possibly four, on an iron rod and let the wires unroll from the back end of the

1249 wagon and so save labor. Then afterwards go and stretch the barbed wire up one strand at a time. But that does not continue only where the ground is even, and where the fence is in straight lines of a quarter of a mile or more. If the fence is around in angles and a difficult place to build, your plan would not work out.

Q. Going around angles and curves, don't they have another arrangement by which the wire turns off, where it stands up straight and
1250 the wire just turns off as it goes along? A. I would say that there are a good many different ways of unrolling barbed wire. I don't just understand the point you are trying to make.

Redirect Examination

By Mr. Newby:

This particular fence that I was speaking about last on the Rindge Ranch that I saw was a division fence on the ranch there. I think it
1251 was just this side of Zuma Canyon where the hog ranch is. I am not positive. That is the fence I am talking about; that was a five strand barbed wire fence; 4x5 redwood posts, which I presume to be 7 ft. long.

Q. Well, in your estimate given to counsel as to the probable cost of such a fence, did you make any allowance for the purchase of materials at other times, or did you fix that present price of labor and material? A. At the present time.

1252 Q. Why did you differentiate between the price of that particular fence which you saw and the estimate which you have given? A. Will you be kind enough to say that over again?

Q. Read the question.

(Last question read.)

Q. As to the cost per mile. A. As to the fence that I saw, the fence that I estimated? I think it is about the same fence.

1253 Q. What makes the difference in price? Possibly I have not made myself clear. Now, in your first estimate of about seven miles you put an average cost of the woven wire fence at $867.58? A. Yes sir.

Q. Now somewhere you testified on direct examination as to the cost of a mile of fence made of five strand of barbed wire. What was that estimate? A. That is five strand barbed wire fence from one end of the ranch to the

1254 other.

Q. What was the price? A. $1000 a mile and something.

The Court: $1071.65.

Q. What was the reason for making the average price throughout the ranch $1071.65 per mile, that you have, when this five strand wire fence that you saw on the Malibu Ranch could be built for $500. A. Did I say it could be built for $500.

Q. I so understood you; what did you say?

1255 A. I said that my estimate of building a fence around the proposed right of way for the county road, where it had to be built up and down the hills and around the ravines and up in the canyons and up on the mountains, that my estimate on that fence, building it from end to end would be about a thousand dollars a mile—$1071.65. Now it would be possible to put in a mile of fence on a straight line, on level ground, and
1256 the conditions favorable, for very much less.

Q. Do you think it could be put in for one-half less? A. I haven't formed an estimate that way. I don't like to guess at it.

Q. In your opinion what could the fence that you saw on the Rindge ranch just east of Zuma Canyon be built for at the present time? A. I would think it would be worth, to build it there, from $550 to $600 a mile.

Q. In your opinion, would it be worth the
1257 difference between that and the $1071 per mile to build it the entire distance of the road? A. Yes sir.

Q. Is that due to the angles and curves that you have designated, and elevations? A. Yes sir, and the mountainous ground—that that part of the road would be built over. I stated on my direct examination that where there are curves it would require more posts. I made an estimate of that. I would like to state that on four and a half miles of the fence—22 or 23

1258 miles, I estimated, and on about 4¼ miles of fence, I put the posts at 12 feet apart, whereas on the rest it was put 16 feet apart. Now, to put posts 12 feet apart requires more labor and naturally more material. I think that the extra labor and material would make up the difference in the price, bring it up to this figure. There is one place where the county proposes to run the fence—or rather run the road up through some canyons and where the road would
1259 go through some very beautiful timber land, along the edge of the mountain, and give it a scenic feature, and the view; and that extends for about 2½ miles, as I understand it, and also, there is a branch road which runs down the beach, and then up some 900 feet,—altogether about 2,000 feet of canyon and that two miles with the other 2½ miles makes about 4½ miles of very difficult ground to build fence on.
1260 I state upon cross-examination that I estimated as a part of the cost of the barbed wire fence, compensation insurance, but I did not on the other. That was an inadvertence. I should have added that to the estimate of the woven wire fence. That would increase it by that much.

Recross-Examination

By Mr. Vallee:

My estimate is for so much per mile to build the fence, in the first place, a woven wire fence

with two barbed wires running along the top, and another estimate of a five barbed wire fence. The barbed wire fence estimate does not include any woven wire at the bottom at all. I have given no estimate of a 26 inch hog-tight sheep fence. That is a fence constructed for the sole purpose of turning sheep, hogs and also grown cattle; but the woven wire fence I have specified would cover the term. The fence I have specified, I think, is a fence that would be particularly practicable for that place, because in raising stock, as I stated this forenoon, they might want to turn the hogs into different fields, or the sheep into different fields, or they may have young stock or horses or even goats. A ranch that is being used for the purpose of raising stock would need a fence that is higher, would need a fence that would be higher than simply a hog fence, a woven wire fence with barbed wire above. What we call a hog fence is a fence that is built especially for hogs, hogs and cattle, and is a fence 26 inches high with barbed wire above, but that is not a practical fence for sheep and young cattle, because the fence is not high enough.

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Redirect Examination

By Mr. Newby:

Q. There are two questions I want to ask you. Can you give an estimate as to the probable life of such a fence as you have testified

1264 to here this morning, woven wire, and the two strands of barbed wire above that, how long would it last under ordinary conditions such as you saw on the ranch? A. Well, I would be—to answer that question, I would have to say that I have been building fences now for 12 years—11 years here in Los Angeles I think; and the first fences I built here with wooden posts are very fair. In some places some of the
1265 line posts have rotted. I think that a fence like this is good for 15 or 20 years. It would have to be repaired from time to time. When the posts would rot out, they would have to be replaced. There would be maintenance charges I might state that on my father's place, where I was raised, the fences there that were put in there when I was a boy going to school are being used yet. They have had to replace the fence posts in places. I would also say that
1266 along the coast the barbed wire rots out very quick because the action of the salt air causes it to deteriorate and rust, so it becomes worn out very much faster than material which is not on the ocean. I would say that if the barbed wire lasted—I noticed barbed wire down along the coast rots out much faster. In my opinion it would last five to eight years. I am hardly competent to give testimony on that. The condition of the woven wire would be about the same as the barbed wire, because this galvaniz-

1267 ing is put on the steel wires that make it last, and the woven wire is galvanized in the same process or about the same process as the barbed wire. As to the relative life of a fence constructed entirely of barbed wire and the combined woven and barbed wire, as compared with the barbed wire, I would say that it would be—that a woven wire fence would last longer, because there are more wires; they are closer to-
1268 gether. Now, take a barbed wire fence and let the barbed wires be a foot apart, say 5 foot high and 5 barbed wires, if one of the barbed wires becomes rusted in a few years and subject to strain, the cattle might get through it. If they would break one wire or two wires, then the fence is practically ruined at that place, whereas woven wire, having more wires, should stand up longer. I specified in my estimate wire of the same grade. I specified there a 1452 Amer-
1269 ican fence. That fence is made by the United States Steel Corporation, and I consider as good as any woven wire that is manufactured. That is one of the standard makes. It is the United States Steel Corporation products. They make quantities of woven wire. They are the largest manufacturers we have.

1270 ROBERT JONES,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Anderson:

My name is Robert Jones. I live at Highland Park. My official position in this county is acting county surveyor. I have in my possession and with me a report of an estimate made in
1271 1916 for the building of a 22-foot road along the right of way of this proposed Malibu Road. (Witness hands paper to counsel.) This is an official record, and it was made in connection with the proposed road to be constructed along the line in question in these proceedings. It was an estimate made as to the cost of a 22-foot road along the line of this survey. The survey as shown on the map filed in this case, along the center line, described in the complaint in this
1272 case.

Mr. Vallee: That is simply for the Malibu Road.

Mr. Anderson: I understand that; of course the other roads were not in existence at that time. Now, if the court please, I would like to offer this estimate. It is an official document and cannot be left here, but I would like to have it—you haven't got an extra copy of it, have you?

The Witness: No.

1273 Mr. Anderson: I think for the purpose of the record it would be enough to read in the totals and then have it understood that it can be produced for reference at any time during the trial and have it further understood that it can be copied into the record.

Mr. Burnell: I think we could stipulate that it is an estimate prepared by the county surveyor at the direction of the board of supervisors.

1274 Mr. Anderson: (Reading.) Malibu Road from east line, Malibu Ranch to west line, Los Angeles, county, estimated cost of constructing a twenty-two foot road-bed along the line shown on county supervisor's map No. 8070, sheets 1 to 4. Now you are familiar with the complaint on file on this case? A. Yes sir.

Q. Map No. 8070 is the map filed as an exhibit filed in that complaint? A. I don't know what the exhibit number is but it is filed with

1275 the complaint.

Q. It is the map annexed to the complaint? A. Yes sir.

Q. "This estimate was made in 1916, based on prices as they existed at that time." I will ask you if it is not a fact that the various matters contained in this are all contained on the summary on the last page? A. That is correct.

1276 Q. In other words the last page is a general summing up of the various matters that have appeared on the preceding pages? A. Yes sir.

Mr. Anderson: Then if the court pleases, for the purpose of this reading at this time, it is only necessary to read the summary. The summary shows: "Cubic yards of excavation and cost of excavation. Total cubic yards of excavation 287,912 cubic yards. Estimated cost
1277 of excavation 73,462.50. Estimated cost of pipes, $25,364.40; estimated cost of head walls, $1,571; estimated cost of bridges, $85,350; estimated cost of guard fences, $2,880. Total cost, $188,627.90."

Q. Now, Mr. Jones, what is meant by "guard fences?" A. That is the fence that is built along the edge of the road to keep the machines from running off. That has nothing to do with the fencing you have been talking about
1278 here today, that is, the fence for the purpose of keeping the stock off the road, right of way fences. It has nothing to do with that. This estimate is simply an estimate to bring the roadbed to grade. It does not include the paving, simply making a surface road with the native dirt of the country.

Mr. Anderson: You may cross-examine.

The document referred to was marked defendant's exhibit 5 for identification only, and is in words and figures as follows, to-wit:

COUNTY SURVEYOR'S FILE COPY

MALIBU ROAD

From East Line of Malibu Ranch to West Line of Los Angeles County.

ESTIMATED COST

of

Constructing a 10 Foot Road Bed Within the Proposed Right of Way Shown on County Surveyor's Map No. 8070, Sheets 1 to 4.

NOTE: This estimate was made in 1916 and was based on prices as they existed at that time.

Location	Description	Total Cost
Mile 1	From Las Flores Canyon follow present traveled road, where same is within the limits of proposed right of way as shown on county surveyor's map No. 8070, sheets 1 to 4. Where present road is not within said right of way, it can in most cases be changed to within same by changing direction of travel. From Station 24+00 to 31+00 make excavation sufficient to make roadway over sand from Station 31+00 to Station 36+00. Also from Station 42+00 to Station 46+00 make fill over sand. Estimated cost of work	$125.00

Mile 2	Present road (may be used)					
Mile 3	From Station 138+00 to Station 140+00 road should be cut back into bank a short distance to keep travel within proposed right of way. From Station 143+00 to Station 154+00 present surface should be ploughed and scraped sufficiently to make it passable. Estimated cost of work					150.00
Location	Description				Amount	Total Cost
Mile 4	From Station 157+00 to 194+50 surface should be ploughed and scraped sufficiently to make passable. Estimated cost				$200.00	
	From Station 200+00 west, road will have to be constructed over new location. 775 cu. yds. Excavation at .25c				193.75	
	PIPES					
	Sta.	Size	Length	Cost per ft.	Total Cost	
	205+40	24"	40'	2.90	116.00	116.00 509.75

Mile 5 — 7429 cu. yds. Excavation at .25c — $1857.25

PIPES

Sta.	Size	Length	Cost per ft.	Total Cost		
227+30	30″	30′	3.50	105.00		
240+10 (2-60″)	60″	180′	8.90	1602.00		
260+90	60″	140′	8.90	1240.00	2953.00	4810.25

Mile 6 — 6478 cu. yds. Excavation at .25c — 1619.50

PIPES

Sta.	Size	Length	Cost per ft.	Total Cost		
299+50	60″	130′	8.90	1157.00		
312+65	36″	100′	5.50	550.00	1707.00	3326.50

Mile 7 — 9518 cu. yds. Excavation at .25c — 2379.50

PIPES

Sta.	Size	Length	Cost per ft.	Total Cost		
319+70	30″	110′	3.50	385.00		
353+42	18″	30′	1.90	57.00	442.00	2821.50

Mile 8	14270 cu. yds. Excavation at .25c				3567.50	3567.50
Mile 9	12273 cu. yds. Excavation at .25c				3068.25	
	PIPES					
	Sta.	Size	Length	Cost per ft.	Total Cost	
	20+00	30″	50′	3.50	175.00	175.00
						3243.25

Location	Description				Amount	Total Cost
Mile 10	2655 cu. yds. Excavation at .25c				663.75	
	PIPES					
	Sta.	Size	Length	Cost per ft.	Total Cost	
	84+90	30″	70′	3.50	245.00	
	96+90	30″	60′	3.50	210.00	455.00
						1118.75
Mile 11	2303 cu. yds. Excavation at .25c				575.75	575.75

Mile 12	1478 cu. yds. excavation at .25c					369.50	
	PIPES						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	73+65	60″	50′	8.90	445.00		
	97+35	24″	30′	2.90	87.00	532.00	901.50
Mile 13	1959 cu. yds. Excavation at .25c					489.75	489.75
Mile 14	1048 cu. yds. Excavation at .25c					262.00	262.00
Mile 15	2347 cu. yds. Excavation at .25c					586.75	586.75
Mile 16	1116 cu. yds. Excavation at .25c					279.00	
	PIPES						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	22+00	60″	100′	8.90	890.00	890.00	1169.00

1296 1295 1294

Mile 17	1864 cu. yds. Excavation at .25c					466.00	
	PIPES						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	85+30	24"	90'	2.90	261.00	261.00	727.00
Mile 18	2961 cu. yds. Excavation at .25c					740.25	740.25
Mile 19	3278 cu. yds. Excavation at .25c					819.50	
	PIPES						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	183+25	24"	80'	2.90	232.00	232.00	
	147+50 Temporary Bridge, (In Los Alisos Canyon)					500.00	1551.50

Location	Description	Amount	Total Cost
Mile 20	3139 cu. yds. Excavation at .25c	$784.75	784.75

Mile 21	1476 cu. yds. Excavation at .25c					369.00	
	PIPES						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	246+80	36″	60′	3.90	234.00	234.00	603.00
Mile to 21.18	556 cu. yds. Excavation at .25c					139.00	139.00

SUMMARY

Mile	Div.	Cu. Yds. Excavation	Est. Cost Excavation	Est. Cost Pipe	Total Cost	Accumulative Cost not including Engineering
1	1		125.00		125.00	125.00
2	1					125.00
3	1		150.00		150.00	275.00
4	1	775+	393.75	116.00	509.75	784.75
5	1	7429	1,857.25	2953.00	4810.25	5595.00
6	1	6478	1,619.50	1707.00	3326.50	8921.50
7	1	9518	2,379.50	442.00	2821.50	11743.00
8	½	14270	3,567.50		3567.50	15310.50

			1302		1301	1300
9	2	12273	3,068.25	175.00	3243.25	18553.75
10	⅔	2655	663.75	455.00	1118.75	19672.50
11	3	2303	575.75		575.75	20248.25
12	3	1478	369.50	532.00	901.50	21149.75
13	¾	1959	489.75		489.75	21639.50
14	4/5	1048	262.00		262.00	21901.50
15	5/6	2347	586.75		586.75	22488.25
16	6/7	1116	279.00	890.00	1169.00	23657.25
17	7	1864	466.00	261.00	727.00	24384.25
18	7	2961	740.25		740.25	25124.50
19	7	3278	819.50	732.00	1551.50	26676.00
20	7	3139	784.75		784.75	27460.75
21	7/8	1476	369.00	234.00	603.00	27063.75
21.18	8	556	139.00		139.00	28202.75
Total		76923	$19705.75	$8,497.00	$28202.75	
Engineering & contingencies, (Approx.) 10%					2797.25	
				Total Estimate	$31000.00	

MALIBU ROAD
From East Line Malibu Ranch to West Line of Los Angeles County

ESTIMATED COST
of
Constructing a 22 Foot Road Bed Along Alignment Shown on County Surveyor's Map No. 8070, Sheets 1 to 4.

NOTE: This estimate was made in 1916 and was based on prices as they existed at that time.

EARTH WORK.

Mile 1.

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
2+40	8+40	600	100	100	.27	27.00	
13+60	26+60	1300	800	200	.35	70.00	
40+80	68+80	2800	2300	100	.54	54.00	
46+40	68+40	2200	1700	100	.46	46.00	
47+00	53+00	600	100	200	.27	54.00	
			Free Haul	4766	.25	1191.50	
			Total	5466		1442.50	$1442.50

1308 1307 1306

CORRUGATED IRON PIPES.

Sta.	Size	Length	Cost per ft. in place	Cost	Headwall	
9+00	18″	32′	1.90	60.80	4.00	
20+00	18″	32′	1.90	60.80	4.00	
27+00	18″	36′	1.90	68.40	4.00	
32+00	18″	34′	1.90	64.60	4.00	
44+00	18″	30′	1.90	57.00	4.00	
			Total	311.60	20.00	331.60

BRIDGES.

0+40+	40′ Pile Trestle	20.00	800.00	
39+50	40′ Pile Trestle	20.00	800.00	
	Total		1600.00	1600.00
		Total		$3374.10

(Design)

1811 1810 1809

Mile 2.

EARTH WORK.

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
58+00	65+00	700	200	500	.28	140.00	
80+00	92+00	1200	700	600	.34	204.00	
			Free Haul	3165	.25	791.25	
			Total	4265		1135.25	$1135.25

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
53+00	18″	32′	1.90	60.80	4.00	
67+00	18″	34′	1.90	64.60	4.00	
80+00	18″	34′	1.90	64.60	4.00	
88+00	18″	34′	1.90	64.60	4.00	
98+00	18″	34′	1.90	64.60	4.00	
				319.20	20.00	339.20
				Total		$1474.45

1314 1318 1312

Mile 3.

EARTH WORK.

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
110+00	117+00	700	200	450	.28	126.00	
138+00	147+00	900	400	2300	.30	690.00	
137+00	157+00	2000	1500	1800	.44	792.00	
			Free Haul	4882	.25	1220.50	
			Total	9432		2828.50	2828.50

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
111+00	18"	32'	1.90	60.80	4.00	
117+10+	36"	38'	3.90	148.20	26.00	
121+20	18"	38'	1.90	72.20	4.00	
130+00	18"	34'	1.90	64.60	4.00	
142+50	18"	38'	1.90	72.20	4.00	
			Total	418.00	42.00	460.00

1317 1316 1315

BRIDGES.

151+00	Malibu Creek, 600'+	Pile and Cylinder Piers.		
		Trestle	15,000.00	15,000.00
		Total		18288.50

(Design)

Mile 4.

EARTH WORK.

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
174+00	191+00	1700	1200	2000	.40	800.00	
			Free Haul	7432	.25	1858.00	
			Total	9432		2658.00	$2658.00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
185+50	18"	38'	1.90	72.20	4.00	
194+80	36"	56'	3.90	218.40	26.00	
205+40	24"	54'	2.90	156.60	9.00	
210+00	18"	50'	1.90	95.00	4.00	
			Total	542.20	43.00	585.20

1820 1819 1818

Total $3243.20

Mile 5.

EARTH WORK.

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
218+00	225+00	700	200	200	.28	56.00	
234+00	240+00	600	100	200	.27	54.00	
			Free Haul	18930	.25	4732.50	
			Total	19330		4842.50	4842.50

GUARD FENCING.

Sta.	Lin. Ft.	Left	Right			
226+50		130				
227+20			70			
235+60		40				
236+30		230				
239+60		100	120			
258+50		250	100			
		750	290	Total 1040 Lin. Ft. at .30¢		312.

1923 1922 1921

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
218+80	18″	28′	1.90	53.20	4.00	
227+30+	30″	80′	3.50	280.00	16.00	
240+10	60″	260′	8.90	2314.00	122.00	
244+10	24″	90′	2.90	261.00	9.00	
249+20	24″	80′	2.90	232.00	9.00	
256+00	18″	30′	1.90	57.00	4.00	
260+90	60″	300′	8.90	2670.00	122.00	
264+00	18″	38′	1.90	72.20	4.00	
			Total	5939.40	290.00	6229.40
					Total	$11383.90

Mile 6

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
276—00	288+00	1200	700	100	.34	34.00	
292—00	299+00	700	200	800	.28	224.00	
			Free Haul	14012	.25	3503.00	
			Total	14912		3761.00	$3761.00

Guard Fencing.

Sta.	Linear Feet. Left	Right		
299+00	80	80		
312+00	100	100		
	180	180	Total 360 Linear Feet at .30¢	108.00

Pipes.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
270+00	18″	28′	1.90	53.20	4.00	
299+50	60″	180′	8.90	1602.00	60.00	
307+00	18″	90′	1.90	171.00	4.00	
312+65	36″	140′	3.90	546.00	25.00	
			Total	2372.20	93.00	2465.20
					Total	$ 6334.20

1829 1828 1827

Mile 7

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
340+00	347+00	700	200	500	.28	140.00	
362+00	372+00	1000	500	2500	.31	775.00	
			Free Haul	30533	.25	7633.25	
			Total	33533		8548.25	$8548.25

GUARD FENCING.

Sta.	Linear Feet Left	Right			
319+30	110	80			
332+00	350	90			
344+30	150				
349+00	140				
363+00	130				
	880	170	Total 1050 Linear feet at .30¢		315.00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
319+70	30″	140′	3.50	490.00	15.00	
323+00	18″	28′	1.90	53.20	4.00	
332+00	18″	40′	1.90	76.00	4.00	
344+30	18″	26′	1.90	49.40	4.00	
349+90	24″	60′	2.90	174.00	9.00	
353+42	18″	50′	1.90	95.00	4.00	
359+40	24″	60′	2.90	174.00	9.00	
365+80	18″	50′	1.90	95.00	4.00	
			Total	1206.60	53.00	1259.60
						$10122.85

BRIDGES.

Sta.		
336+50	Corral Canyon (H. E. Warrington, Estimate)	13600.00
	Total	$23722.85

(Design)

1 Standard 38′ Wooden Deck Truss.
4 do 19′ Trestle Spans.
2 Concrete Piers.
2 Wooden Piers, with posts set in concrete.
Wooden Bulkhead and Wings, with posts set in concrete.

Mile 8 From Sta.	To Sta.	Dist.	Earth Work. Overhaul / Free Haul	Cu. yds.	Rate	Cost	Total
			Free Haul	37824	.25	9456.00	$9456.00

Guard Fencing.

Sta.	Linear Feet Left	Right		
371+00	100	100		
385+00		250		
398+00		200		
412+00		100		
	100	650	Total 750 Linear Feet at .30¢	225.00

1338 1337 1336

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
379+40	18″	30′	1.90	57.00	5.00	
384+40	18″	30′	1.90	57.00	5.00	
390+50	18″	30′	1.90	57.00	5.00	
397+20	24″	60′	2.90	174.00	10.00	
404+30	24″	80′	2.90	232.00	10.00	
407+00	24″	70′	2.90	203.00	10.00	
410+00	18″	30′	1.90	57.00	5.00	
			Total	837.00	50.00	887.00
						10568.00

BRIDGES.

Sta.		
372+00	Solstice Canyon, (H. E. Warrington, Estimate)	15100.00
	Total	$25668.00

(Design)

2 Standard 50′ Deck Trusses
2 do 19′ Wooden Trestle Spans.
3 Concrete piers.
Wooden Bulkheads and Wings, with posts set in concrete.

Mile 9.

EARTH WORK.

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
7+80	14+80	700	200	200	.28	56.00	
16+00	22+00	600	100	500	.26	130.00	
37+00	48+00	1100	600	900	.33	297.00	
39+00	47+00	800	300	2800	.29	812.00	
			Free Haul	39924	.25	9981.00	
			Total	44324		11276.00	$11276.00

GUARD FENCING.

Sta.	Linear Feet Left	Right
20+00	150	100
22+00	200	

		1344		1343	1342
34+00	40	50			
35+00		60			
47+00		150			
	390	360	Total Linear feet 750 at .30¢		225.00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
12+65	30″	50′	3.50	175.00	15.00	
20+00	30″	80′	3.50	280.00	15.00	
33+70	30″	60′	3.50	210.00	15.00	
35+50	24″	130′	2.90	377.00	10.00	
43+60	30″	100′	3.50	350.00	15.00	
46+80	36″	80′	3.90	312.00	25.00	
55+75	24″	80′	2.90	232.00	10.00	
			Total	1936.00	105.00	2041.00
						13542.00

BRIDGES

Sta.				
20+00	Latigo Canyon, Cattle Pass		500.00	
48+65+	Escondido Canyon (H. E. Warrington,) Estimate		14000.00	14500.00
		Total		$28042.00

(Design)

2 Standard 50′ Wooden Deck Trusses.
2 do 19′ Trestle Spans.
3 Concrete Piers.
Wooden bulkheads and Wings, with posts set in concrete.

Mile 10 — EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
79+00	85+00	600	100	250	.27	67.50	
97+00	103+00	600	100	400	.27	108.00	
			Free Haul	15899	.25	3974.75	
			Total	16549		4150.25	4150.25

1350 1349 1348

Guard Fencing.

Sta.	Linear Feet Left	Linear Feet Right		
70+00	120	120		
85+00	130	130		
96+00	80	100		
106+00		80		
	330	430	Total 760 Linear feet at .30¢	228.00

Pipes.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
61+00	18″	30′	1.90	57.00	5.00	
70+25	18″	130′	1.90	247.00	5.00	
79+60	18″	60′	1.90	114.00	5.00	
84+90	30″	90′	3.50	315.00	15.00	
96+90	30″	100′	3.50	350.00	15.00	
97+90	18″	50′	1.90	95.00	5.00	
106+30	18″	120′	1.90	228.00	5.00	
			Total	1406.00	55.00	1461.00
					Total	$ 5839.25

454

1853 1852 1851

Mile 11.

EARTH WORK.

From Sta.	To Sta.	Dist.	Overhaul / Free Haul	Cu. yds.	Rate	Cost	Total
			Free Haul	7320	.25	1830.00	$1830.00

GUARD FENCING

Sta.	Linear Feet Left	Right					
20+00	300						
28+00		150					
31+00	200						
	500	150	Total 650 Linear feet at .30¢				195.00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall
8+85	18″	60′	1.90	114.00	5.00
20+50	18″	30′	1.90	57.00	5.00
33+50	18″	30′	1.90	57.00	5.00

				1856	1855	1854
45+00	18″	30′	1.90	57.00	5.00	
52+80	30″	36′	3.50	126.00	15.00	
				411.00	35.00	446.00

BRIDGES.

Sta. 28+75 Ramirez Canyon (H. E. Warrington, Estimate) 3600.00

Total $ 6071.00

(Design)

3 Standard 38′ Wooden Trusses.
Wooden Bulkheads and Wings, with posts set in concrete.
Wooden Piers, with posts set in concrete.

Mile 12 EARTH WORK.

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
128+00	136+00	800	300	100	.29	29.00	
			Free Haul	6415	.25	1603.75	
			Total	6515		1632.75	$1632.75

1859 1858 1857

Guard Fencing.

Sta.	Linear Feet Left	Linear Feet Right		
73+00	100	100		
78+00		200		
97+00		100		
	100	400	Total 500 Linear feet at .30¢	150.00

Pipes.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
64+00	24″	30′	2.90	87.00	10.00	
73+65	60″	90′	8.90	801.00	60.00	
83+00	18″	30′	1.90	57.00	5.00	
97+35	24″	56′	2.90	162.40	10.00	
103+40	18″	44′	1.90	83.60	5.00	
			Total	1191.00	90.00	1281.00
					Total	$ 3063.75

1362 1361 1360

Mile 13

From Sta.	To Sta.	Dist.	Earth Work		Rate	Cost	Total
			Overhaul	Cu. yds.			
			Free Haul	10251	.25	2562.75	$2562.75

Guard Fencing

Sta.	Linear Feet Left	Right				
133+00		200				
139+00	200					
	200	200	Total 400 Linear feet at .30¢			120.00

Pipes.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
115+00	18″	30′	1.90	57.00	5.00	
119+15	24″	60′	2.90	174.00	10.00	
129+90	24″	40′	2.90	116.00	10.00	
140+00	48″	100′	5.60	560.00	70.00	
11+00	18″	40′	1.90	76.00	5.00	
13+20	18″	44′	1.90	83.60	5.00	
			Total	1066.60	105.00	1171.60

458

1365 1364 1363

BRIDGES.

Sta.		
3+00 to 4+50 Dume (Zuma) Canyon. 160′ of Pile Trestle at $25.00		4000.00
	Total	$ 7854.35

EARTH WORK.

Mile 14 From Sta.	To Sta.	Dist.		Cu. yds.	Rate	Cost	Total
			Overhaul Free Haul	5322	.25	1330.50	$1330.50

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
20+05	18″	36′	1.90	68.40	5.00	
41+00	24″	36′	2.90	104.40	10.00	
43+75	36″	50′	3.90	195.00	25.00	
53+75	36″	46′	3.90	179.40	25.00	
3+00	24″	46′	2.90	133.40	10.00	
17+00	24″	32′	2.90	92.80	10.00	
			Total	773.40	85.00	858.40
						$ 2188.90

1368 1367 1366

Mile 15

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
33+00	43+00	1000	500	150	.31	46.50	
48+00	54+00	600	100	500	.27	135.00	
373+00	379+00	600	100	600	.27	162.00	
372+00	385+00	1300	800	200	.35	70.00	
						1470.25	
			Free Haul	5881	.25		
			Total	7331		1883.75	$1883.75

GUARD FENCING.

Sta.	Linear Feet Left	Right			
53+00		100			
		100	Total 100	Linear Feet at .30¢	30.00

1871 1870 1869

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
30+00	24"	36'	2.90	104.40	10.00	
35+00	24"	36'	2.90	104.40	10.00	
42+90	24"	40'	2.90	116.00	10.00	
385+25	24"	30'	2.90	87.00	10.00	
387+50	18"	30'	1.90	57.00	5.00	
			Total	468.80	45.00	513.80

BRIDGES.

Sta.		
371+00	Trancas Canyon, Combination Pile Trestle,	5500.00
	Total	$ 7927.55

(Design)

Mile 16

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
19+00	28+00	900	400	200	.30	60.00	
21+40	27+40	600	100	600	.27	60.00	
			Free Haul	9020	.25	2255.00	
			Total	9820		2477.00	$2477.00

GUARD FENCING.

Sta.	Linear Feet Left	Right			
21+00	200	200			
25+00	400				
	600	200	Total 800 Linear feet at .30¢		240.00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall
397+00	18"	30'	1.90	57.00	5.00
400+50	30"	30'	3.50	105.00	15.00

			1377		1376		1375	
10+30	36″	30′		3.90	117.00	25.00		
13+00	18″	32′		1.90	60.80	5.00		
22+00	60″	100′		8.90	890.00	60.00		
25+90	18″	30′		1.90	57.00	5.00		
			Total		1286.80	115.00	1401.80	
						Total	$ 4118.80	

Mile 17.

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
53+00	59+00	600	100	200	.27	54.00	
				7012	.25	1753.00	
			Total	7212		1807.00	1807.00

GUARD FENCING.

Sta.	Linear Feet	
	Left	Right
58+00	150	100
77+50	50	50

85+00	60	60		
	260	210	Total 470 Linear Feet at .30¢	141.00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
38+00	24″	30′	2.90	87.00	10 00	
47+00	24″	30′	2.90	87 00	10 00	
67+50	18″	30′	1.90	57 00	5 00	
77+65	24″	100′	2.90	290 00	10 00	
85+30	24″	90′	2.90	261 00	10 00	
			Total	782 00	45 00	827 00

BRIDGES.

Sta.		
58+80	Encinal Canyon (H. E. Warrington, Estimate)	1700.00
	Total	$ 4475.00

(Design)

1383 1382 1381

1 Standard 38′ Wooden Truss.
Wooden Bulkheads and Wings, with posts set in concrete.

Mile 18

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
90+00	101+00	1100	600	100	.33	33.00	
115+00	122+00	700	200	400	.28	112.00	
			Free Haul	7946	.25	1986.50	
			Total	8446		2131.50	$2131.50

GUARD FENCING

Sta.	Linear Feet Left	Linear Feet Right		
92+00	50	50		
101+50	40	40		
110+00	40	40		
113+50	50	50		
121+00	100	100		
	280	280	Total 560 Linear feet at .30¢	168.00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
91+80	24"	60'	2.90	174.00	10.00	
99+40	18"	30'	1.90	57.00	5.00	
101+50	30"	70'	3.50	245.00	15.00	
110+10	24"	60'	2.90	174.00	10.00	
113+40	24"	60'	2.90	174.00	10.00	
126+70	18"	36'	1.90	68.40	5.00	
		Total		892.40	55.00	947.40
						$ 3246.90

BRIDGES.

Sta.		
121+55	First Canyon East of Lechuza (H. E. Warrington, Estimate)	2650.00
	Total	$ 5896.90

1 Standard 38′ Wooden Truss.
2 do 19′ Trestle Spans.
Wooden Bulkhead and Wings with posts set in concrete.
Wooden Posts set in concrete.

Mile 19

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
			Free Haul	6098	25	1524.50	$1524.50

GUARD FENCING

Sta.	Linear Feet Left	Linear Feet Right		
147+50	100	100		
183+00	60	50		
	160	150	Total 310 Linear feet at .30¢	93.00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall
157+60	18″	30′	1.90	57.00	5 00
159+50	18″	30′	1 90	57 00	5 00

				1892	1891	1890
170+20	24″	32′	2 90	92 80	10 00	
172+40	18″	30′	1 90	57 00	5 00	
179+90	24″	40′	2 90	116 00	10 00	
183+25	24″	80′	2 90	232 00	10 00	
193+00	18″	30′	1 90	57 00	5 00	
			Total	668 80	50 00	718.80

BRIDGES.

Sta.		
147+30	Los Alisos Canyon (H. E. Warrington, Estimate)	2400.00
	Total	$ 4736.30

(Design)

1 Standard 38′ Wooden Truss.
1 do 19′ Trestle Span.
Wooden Bulkhead and Wings, with posts set in concrete.
Wooden Pier, with posts set in concrete.

1895 1894 1893

Mile 20

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
191+00	199+00	800	300	200	.29	58.00	
229+00	237+00	800	300	200	.29	58.00	
			Free Haul	11914	.25	2978.50	
			Total	12314		3094.50	$3094.50

GUARD FENCING.

Sta.	Linear Feet Left	Right					
199+00	100	100					
221+00	230	100					
230+00	80	30					
237+50	100						
	510	230	Total 740	Linear feet at .30¢			222.00

1398 1397 1396

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
213+50	24"	30'	2 90	87 00	10 00	
221+50	48"	130'	5.60	728 00	35 00	
230+45	24"	80'	2 90	232 00	10 00	
237+60	30"	50'	3 50	175 00	15 00	
		Total		1222 00	70 00	1292 00

BRIDGES.

Sta.		
199+75	Nicholas Canyon (H. E. Warring, Estimate)	1700.00
	Total	$ 6308.50

(Design) 1 Standard 38' Wooden Truss.
Wooden Bulkhead and Wings, with posts set in concrete.
Wooden Pier, with posts set in concrete.

1401 1400 1399

Mile 21

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
258+00	268+00	1000	500	600	.31	186.00	
			Free Haul	8592	.25	2148.00	
			Total	9192		2334 00	$2334.00

GUARD FENCING.

Sta.	Linear Feet Left	Right		
247+00	140	120		
250+00	100			
	240	120	Total 360 Linear feet at .30¢	108 00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall
264+80	36″	110′	3 90	429 00	25 00
249+80	24″	80′	2 90	232 00	10 00
253+40	18″	50′	1 90	95 00	5 00
1+40	24″	30′	2 90	87 00	10 00

—471—

		1404		1408		1402
6+00	24″	30′	2 90	87 00	10 00	
10+00	24″	36′	2 90	104 40	10 00	
19+00	24″	30′	2 90	87 00	10 00	
26+00	30″	30′	3 50	105 00	15 00	
			Total	1226 40	95 00	1321 40

BRIDGES.

Sta.		
270+00	Arroyo Sequit Canyon: Combination Pile Trestle Bridge.	4000 00
	Total	$ 7763 40

(Design)

EARTH WORK

Mile 21.18 From Sta.	To Sta.	Dist.		Cu. yds.	Rate	Cost	Total
			Overhaul Free Haul	3024	.25	756 00	$756 00

1407 1406 1405

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
32+00	24"	30'	2.90	87 00	10 00	
		Total		87 00	10 00	97 00
					Total	$853.00

SUMMARY OF PIPES.

Size	Total Length	Rate per ft.	Cost
18"	2242	1 90	$4259 80
24"	2134	2 90	6188 60
30"	916	3 50	3206 00
36"	550	3 90	2145 00
48"	230	5 60	1288 00
60"	930	8 90	8277 00
		Total	$ 25364.40

Mile	Div.	Cu. yds of Excava'n	Est Cost of Excava'n	Est Cost of Pipes	Est Cost of H'd Walls	Est Cost of Bridges	Est Cost of Guard Fencing	Total Cost
			1410			1409		1408
1	1	5466	1442 50	311 60	20 00	1600 00		3374 10
2	1	4265	1135 25	319 20	20 00			1474 45
3	1	9432	2828 50	418 00	42 00	15000 00		18288 50
4	1	9432	2658 00	542.20	43 00			3243 20
5	1	19330	4842 50	5939 40	290 00		312.00	11383 90
6	1	14912	3761 00	2372 20	93 00		108.00	6334 20
7	1	33533	8548 25	1206 60	53 00	13600 00	315 00	23722 85
8	1 2	37824	9456 00	837 00	50 00	15100 00	225 00	25668 00
9	2	44324	11276 00	1936 00	105 00	14500 00	225 00	28042 00
10	2 3	16549	4150 25	1406 00	55 00		228 00	5839 25
11	3	7320	1830 00	411 00	35 00	3600 00	195 00	6071 00
12	3	6515	1632 75	1191 00	90 00		150 00	3063 75

		1418				1412		1411
13	3 4	10251	2562 75	1066 60	105 00	4000 00	120 00	7854 35
14	4 5	5322	1330 50	773 40	85 00			2188 90
15	5 6	7331	1883 75	468 80	45 00	5500 00	30 00	7927 55
16	6/7	9820	2477 00	1286 80	115 00		240 00	4118 80
17	7	7212	1807 00	782 00	45 00	1700 00	141 00	4475 00
18	7	8446	2131 50	892 40	55 00	2650 00	168 00	5896 90
19	7	6098	1524 50	668 80	50 00	2400 00	93 00	4736 30
20	7	12314	3094 50	1222 00	70 00	1700 00	222 00	6308 50
	7							
21	8	9192	2334 00	1226 40	95 00	4000 00	108 00	7763 40
21.18	8	3024	756 00	87 00	10 00			853 00
		287912	$ 73462 50	$25364 40	1571 00	85350 00	2880 00	188627 90

Wherever the minus sign is used in the above estimate a plus sign was intended.

1414 *Cross-Examination*

By Mr. Burnell:

This is not the only estimate we have made for the cost of constructing the road over the Malibu Ranch. I have another estimate with me.

(Witness hands paper to counsel.)

Mr. Burnell: The document you have just handed to me, Mr. Jones, is entitled "Malibu Road, from east line of Malibu Ranch to west
1415 line of Los Angeles county, estimated cost of constructing ten-foot road-bed along the line shown on county surveyor's map, etc."

Mr. Anderson: Now, Mr. Burnell, if you wish to make an offer of that, I wish to have an opportunity to object to its contents.

Mr. Burnell: Oh yes. This estimate was also made by you as county surveyor? A. Yes sir; it was made in the county surveyor's de-
1416 partment at the same time the other was made. Likewise was it made at the request of the board of supervisors—

Q. And like the other it is an official document? A. Yes sir.

Q. And the cost is shown on the final page, the final summary? That contains the general figures of the report? A. That is correct.

Mr. Anderson: Do you wish to offer that?

Mr. Burnell: Yes.

Mr. Anderson: I object.

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October Term, 1942

1417 Mr. Burnell: I have not made my offer yet. We now offer the document in evidence, under the same conditions as the one Mr. Anderson offered, namely, that the reporter copy it into the record.

Mr. Anderson: We object to that document, if the court please, on the ground it is not cross-examination. That is the only objection we have to it. We didn't ask him anything about that. It does not tend to impeach. It relates to a different condition.

1418 The Court: I don't see how it has any relevancy.

Mr. Burnell: The defendants have offered and introduced in evidence the surveyor's estimate of the cost of building an actual twenty-two foot road instead of a ten-foot road. We offer this in evidence upon the theory that it is material and relevant because of the fact that the defendants have already been allowed to bring in one estimate. This is the other estimate made at the same time, one being for a
1419 twenty-two-foot roadway and the other for a ten-foot roadway. It seems to me it is admissible on the theory that it would be admissible if they had produced a part of a document and this was the rest of that document. They have produced part of a document. We ask that the rest of the estimate be put in.

The Court: Objection overruled.

To which ruling the defendants then and there duly excepted.

Exception No. 9.

MALIBU ROAD
From East line of Malibu Ranch
to
West line of Los Angeles County.

ESTIMATED COST
of
Constructing a 10 Foot Road Bed Within the Proposed Right of Way Shown on County Surveyor's Map No. 8070, Sheets 1 to 4.

NOTE: This estimate was made in 1916 and was based on prices as they existed at that time.

Location	Description	Total Cost
Mile 1	From Las Flores Canyon follow present traveled road, where same is within the limits of proposed right of way as shown on county surveyor's map No. 8070, sheets 1 to 4. Where present road is not within said right of way, it can in most cases be changed to within same by changing direction of travel. From Station 24+00 to 31+00 make excavation sufficient to make roadway over sand from Station 31+00 to Station 36+00.	

	1425	1424	1423
	Also from Station 42+00 to Station 46+00 make fill over sand. Estimated cost of work		$125.00
Mile 2	Present road (may be used)		- - -
Mile 3	From Station 138+00 to Station 140+00 road should be cut back into bank a short distance to keep travel within proposed right of way. From Station 143+00 to Station 154+00 present surface should be ploughed and scraped sufficiently to make it passable. Estimated cost of work		$150.00
Mile 4	From Station 157+00 to 194+50 surface should be ploughed and scraped sufficientlv to make passable. Estimated cost	$200.00	
	From Station 200+00 west, road will have to be constructed over new location. 775 cu. yds. Excavation at .25c	$193.75	

1428 1427 1426

PIPES.

	Sta.	Size	Length	Cost per ft.	Total Cost		
	205+40	24″	40′	2.90	116.00	116.00	$509.75
Mile 5	7429 cu. yds. Excavation at .25c					1857.25	

PIPES.

Sta.	Size	Length	Cost per ft.	Total Cost		
227+30	30″	30′	3.50	105.00		
240+10 (2+60″)	60″	180′	8.90	1602.00		
260+90 (2+60″)	60″	140′	8.90	1240.00	2953.00	4810.25

Location	Description					Amount	Total Cost
Mile 6	6478 cu. yds. Excavation at .25c					$1619.50	
			PIPES.				
	Sta.	Size	Length	Cost per ft.	Total Cost		
	299+50	60″	130′	8.90	1157.00		
	312+65	36″	100′	5.50	550.00		
						1707.00	$3326.50
Mile 7	9518 cu. yds. Excavation at .25c					2379.50	
			PIPES.				
	Sta.	Size	Length	Cost per ft.	Total Cost		
	319+70	30″	110′	3.50	385.00		
	353+42	18″	30′	1.90	57.00	442.00	2821.50
Mile 8	14270 cu. yds. Excavation at .25c					3567.50	3567.50

1434 1433 1432

Location	Description					Amount	Total Cost
Mile 9	12273 cu. yds. Excavation at .25c					3068.25	
	PIPES.						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	20+00	30″	50′	3.50	175.00	175.00	3243.25
Mile 10	2655 cu. yds. Excavation at .25c					$663.75	
	PIPES.						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	84+90	30″	70′	3.50	245.00		
	96+90	30″	60′	3.50	210.00	455.00	$1118.75
Mile 11	2303 cu. yds. Excavation at .25c					575.75	575.75

—482—

1487 1486 1485

Location	Description					Amount	Total Cost
Mile 12	1478 cu. yds. Excavation at .25c					369.50	
	PIPES.						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	73+65	60″	50′	8.90	445.00		
	97+35	24″	30′	2.90	87.00	532.00	901.50
Mile 13	1959 cu. yds. Excavation at .25c					489.75	489.75
Mile 14	1048 cu. yds. Excavation at .25c					262.00	262.00
Mile 15	2347 cu. yds. Excavation at .25c					$586.75	$586.75
Mile 16	1116 cu. yds. Excavation at .25c					279.00	
	PIPES.						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	22+00	60″	100′	8.90	890.00	890.00	1169.00

483

1440 1439 1438

Mile 17	1864 cu. yds. Excavation at .25c					466.00	
	PIPES.						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	85+30	24"	90'	2.90	261.00	261.00	727.00
Mile 18	2961 cu. yds. Excavation at .25c					740.25	740.25
Mile 19	3278 cu. yds. Excavation at .25c					819.50	
	PIPES.						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	183+25	24"	80'	2.90	232.00	232.00	
	147+50 Temporary Bridge (In Los Alisos Canyon)					500.00	1551.50
Location	Description					Amount	Total Cost
Mile 20	3139 cu. yds. Excavation at 25c					$784.75	$784.75

Mile 21	1476 cu. yds. Excavation at 25c					369.00	
	PIPES.						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	246+80	36″	60′	3.90	234.00	234.00	603.00
Mile to 21.18	556 cu. yds. Excavation at .25c					139.00	139.00

SUMMARY.

Mile	Div.	Cu. Yds. Excavation	Est. Cost Excavation	Est. Cost Pipe	Total Cost	Accumulative Cost not including Engineering
1	1		125.00		$ 125.00	$ 125.00
2	1					125.00
3	1		150 00		150.00	275.00
4	1	775	393 75	116.00	509.75	784.75
5	1	7429	1,875 25	2,953.00	4,810.25	5,595.00
6	1	6478	1,619.50	1,707.00	3,326.50	8,921.50
7	1	9518	2,379.50	442.00	2,821.50	11,743.00
8	½	14270	3,567.50		3,567.50	15,310.50

			1446		1445	1444
9	2	12273	3,068.25	175.00	3,243.25	18,553.75
10	⅔	2655	663.75	455.00	1,118.75	19,672.50
11	3	2303	575.75		575.75	20,248.25
12	3	1478	369.50	532.00	901.50	21,149.75
13	¾	1959	489.75		489.75	21,639.50
14	4/5	1048	262.00		262.00	21,901.50
15	5/6	2347	586.75		586.75	22,488.25
16	6/7	1116	279.00	890.00	1,169.00	23,657.25
17	7	1864	466.00	261.00	727.00	24,384.25
18	7	2961	740.25		740.25	25,124.50
19	7	3278	819.50	732.00	1,551.50	26,676.00
20	7	3139	784.75		784.75	27,460.75
21	7/8	1476	369.00	234.00	603.00	27,063.75
21.18	8	556	139.00		139.00	28,202.75
Total		76923	$19,705.75	$8,497.00	$28,202.75	
Engineering & contingencies (approx.) 10%					2,797.25	
Total estimate					$31,000.00	

1447 Mr. Burnell: The total figures on this document, Your Honor, are as follows: Miles 21.18; cubic yards of excavation, 76,923; estimated cost of excavation, $19,705.75; estimated cost of pipe, $8,497; total cost, $28,202.75; engineering and contingencies, approximately ten per cent, $2,797.25; total estimate, $31,000.00.

Mr. Anderson: Even?

Mr. Burnell: $31,000.00 even as against the
1448 total cost of the twenty-two-foot road of $188,-627.00.

(Witness continuing.) Prior to making these estimates I had been over part of the line of the proposed right-of-way through Malibu Ranch. I was not personally on the survey myself, but members of our force did the work. Mr. Comly was on the job all the time. His position is deputy county survey at this time. At the time the survey was made he held the
1449 same position in the department that he does now, deputy county surveyor. I am familiar with the contour of the country over which the road goes. In the estimated cost the purpose of the excavation is to bring the road to a desired grade; the proposed right of way skirts the hills in places, and it is to make the road level.

Redirect Examination

By Mr. Anderson:

Q. I note that the document marked defendant's exhibit 5, which is the estimated cost of

1450 constructing a twenty-two foot road-bed, and on the last page in the summary I note that in the estimated cost of bridges you estimate something like thirteen bridges. Does that include what you call culverts and trestle work, as well as ordinary bridges? A. The detailed estimate there shows in each case what sort of bridge is proposed on each mile.

Mr. Anderson: If the court please, in addition to what I have already read in the rec-
1451 ord, I would like to read this from page 1: Bridges, 40 foot pile trestle, $800; 40 foot pile trestle, $800; from page 3, Malibu bridge, 600 foot pile and cylinder piers, $15,000; on page 7½ bridges, Corral canyon, H. A. Warrington estimate, $13,600; page 8½ bridges, Solstice canyon, H. A. Warrington estimate, $15,100; on page 9½ bridges, Latigo canyon, cattle pass, $500; Escondido canyon, H. A. Warrington es-
1452 timate, $14,000; on page 11, Ramirez canyon, H. A. Warrington estimate, $3,600; on page 13, Dume (Zuma canyon) 160 feet of pile trestle at $25.00; $4,000; on page 15, bridges, Trancas canyon, combination pile trestle, $5,500; on page 17, bridges, Encinal canyon, H. A. Warrington estimate, $1,700; on page 18½, bridges, first canyon east of Lachusa, H. A. Warrington, estimate, $2,650; on page 19, of bridges, Los Alisos canyon, H. A. Warrington estimate, $2,400; on page 20, bridges, Nicolas canyon, H. A. War-

1453 rington estimate, $1,700; on page 21, bridges, Arroyo Sequit canyon, combination pile trestle bridge, $4,000, which I believe is all. Do you know why there was no estimate in this document for a bridge across Lachusa canyon? A. I don't remember now. I presume our records would show why that is omitted. I couldn't tell you offhand.

Q. Calling your attention to the document which was admitted in evidence here as plain-
1454 tiff's exhibit "A," being the estimated cost of constructing the ten-foot roadway within the proposed right-of-way, I will ask you whether or not that document anywhere contains any estimate for any bridges, culverts, or trestles? A. It includes some pipes; no trestle bridges.

Q. The pipes which are included in this document that I have just—this document Defendant's Exhibit 5—are the pipes which you sum-
1455 marize here on page 22 as amounting to $25,-364.40—are they included in the plaintiff's Exhibit "A"? A. I presume they are; I couldn't say without comparing them. I consider pipes in the nature of bridges. The purpose of the pipes is to take care of the drainage. They are not bridges, or trestles.

Q. Then from this plaintiff's Exhibit "A," in so far as these pipes are concerned, I should like to read the following: On page 2, estimate of pipes aggregating $2953; on page 3 estimate

1456 of pipes aggregating $1707; another estimate of pipes aggregating $442; another estimate of pipes aggregating $175; on page 4 another estimate aggregating $455; also on the same page $532; on page 5 an estimate aggregating $890; and another estimate of pipes aggregating $232. I see you have on page 5, an item, "Temporary bridge Los Alisos canon $500." That was a bridge estimated and not a pipe estimated? A. I believe so.

1457 Q. I see on page 6, an estimate of pipe, $234. Then as a matter of fact, only two items that are really contained in this estimate, with the exception of the $500 for the temporary Los Alisos Canyon bridge, the only two estimates are the cost of excavation and pipes? A. I think that that is a fact. (Witness examined the paper.) That is correct. This summary on page 7 of plaintiff's Exhibit "A," under item of esti-

1458 mated cost of pipe, that includes the temporary bridge.

Q. Now, I call your attention to the fact that the summary of pipes on page 22 of defendant's Exhibit 5, shows a total expenditure or an estimate of $25,364.40. I call your further attention to the fact that the total estimate of the pipes on page 7, which, as you see, includes the temporary Los Alisos Canon bridge, shows a total $8497. Why were the pipes estimated at so much less cost for the ten-foot road than the

1459 twenty-two-foot road? A. A ten-foot road is not as expensive as a twenty-two foot road.

Q. Don't you need a large carrying capacity for the pipes? A. Not to carry water across the roadway; those pipes are not all to take care of the drainage which comes down the stream, but the water alongside the road, as you will find on all mountain roads.

Q. You think that a ten-foot road would re-
1460 quire a different size pipe from a twenty-two foot road? A. That is what our estimate shows.

Recross-Examination

By Mr. Burnell:

Referring to some of the bridges, those are generally bridges where the road crosses canons. We have a standard or average amount of clearance above the ground for those bridges. Those bridge estimates were made by the bridge
1461 engineer of this county and they are standard clearances. What is the clearance allowed above the floor of the canon all depends on the canon and the length of the bridge; the thing you have to take care of is the amount of water way necessary, and the height of your bridge depends on the width of your stream, which fixes to some extent the length of the bridge the same as the height. I don't think the clearance under any of our bridges has at any time been less than eight or ten feet, though I would have to

look at the details before I would be able to say because it was a couple of years ago that the estimate was made. This estimate itself does not show the amount of clearance under the bridges; however, the deputy who made the actual figures could tell you. That was Mr. Comly. He made the general estimate for the most part, the bridge estimates were made by the county bridge engineer as shown in this estimate. The estimate for the ten-foot roadway was made for the reason that the question came up as to what it would cost to build a road which would be passable, a road similar to the road which is now traveled through the Rindge ranch. The width of the present road, as I remember it, most of the way, is the width of a wagon track. It is probably, roughly, I would suppose it would average probably eight feet, might be ten.

Redirect Examination

By Mr. Anderson:

I think a ten-foot road along the edge of a mountain such as I refer to would be called a passable road. I would think that these roads that we have contemplated, the 10 foot road, that there will be a passage through the ranch over it during the rainy season. That road across Malibu flats, where the long trestle is contemplated would be passable whenever the present road would be.

1465 F. B. SCOTTON,

a witness called in behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Anderson:

My name is F. B. Scotton. I live in Los Angeles. I am forty-four years old. I am secretary to the Rindge people and their companies. My duties in that regard are very general; various duties, handling all kinds of business, in-
1466 cluding the business in connection with the Malibu Ranch. I have been connected with the Rindge interests—known as the Rindge properties, eighteen years in California. During that period I have had occasion to thoroughly familiarize myself with the Rindge properties and the surrounding country, particularly in connection with various litigation that has arisen from time to time in that section, and
1467 am very familiar with all that surrounding country. This document on the blackboard is an enlargement of the U. S. Topographical Sheets. (It was agreed between counsel that the map in question might be offered in evidence, and it was received as marked and is Defendants' Exhibit 6.)

(The Witness continuing.) It is a photographic enlargement.

Mr. Burnell: There is just one mistake on that map. That is, that what is known as

1468 Nicolas Canyon is really Los Alisos, and Nicolas is the next canyon.

Mr. Anderson: Yes, we will so stipulate; and we will ask leave at the adjournment to make that change in the lettering on that, and eliminate the word "Nicolas Canyon," and transfer it to the correct place.

Mr. Burnell: Yes. We will agree to that.

Q. By Mr. Anderson: Now, Mr. Scotton, do you know the scale of that map? A. The
1469 original map was 1 and 125/1000. It has been enlarged eight times. That would cut down the scale eight times. On the original map, the central portion was enlarged eight times so as to bring it all up to the scale.

Q. Now, I believe it has been stipulated that these figures which appear variously over the map, 2216, 2819, 2076, are elevations given in feet.

1470 Mr. Burnell: Elevations in feet above the sea level at high tide.

Q. By Mr. Anderson: These various lines which meander around here, are what is known as the contour lines, and indicate the level at the point where the line touches.

Mr. Burnell: Yes, on any one contour line, the same level obtains and the lines are 100 feet apart.

The Witness: Correct as to the central por-

1471 tion. The contour lines on the two end pieces are 50 feet apart.

Q. By Mr. Anderson: Take the pointer and indicate what the various colors on the map indicate. A. This indicates the portion being in Ventura county. The black dot and dash line indicates the boundary line between Los Angeles and Ventura counties. The heavy purple line indicates the Malibu-Topanga-Trancas
1472 grant line, that being the Malibu Ranch and the piece of property across which the road in the so-called main case is sought to be condemned. The purple is within the ranch, the northern portion—at the northern portion there is a black dot and dash line indicating the line of the grant. The heavy red line within the Malibu Ranch, running from Los Flores Canyon on the east to the Ventura county line on the west indicates the relative position of the road sought to
1473 be condemned through the Malibu Ranch. I placed that upon the map, that is, the map No. 5, exhibit A (of the complaint). The heavy black dark line at the upper part of the map indicates the relative location of the state highway—Ventura state highway, "state highway" being marked on in red roughly. The light purple areas marking various points, north of the Malibu Ranch line, mark the holdings of the Rindge Company and May K. Rindge, outside of the Malibu Ranch. The yellow lines, between the

1474 north line of the Malibu Ranch and the state highway, indicate some of the roadways that have been and are in use at the present time. All of the other black lines upon the map are those that were upon the topographical sheets. The yellow line on the outside of the ranch line running to Ventura county is the old roadway into Venture that was in existence prior to the building of the state highway, and still exists. Santa Monica is at the southwestern portion of the
1475 map—the lower lefthand corner. Los Angeles would be out from the upper right hand corner. Triunfo on the state highway is directly north of the first "S" in "Russell Valley," and about the center of the map. I can mark that with a blue pencil. (Witness marks on map.) I have drawn a circle in black around the point on the state highway directly above the first "S" in "Russell," to indicate Triunfo post-office. I have marked upon the map, the words "Triunfo
1476 P. O." and have drawn an arrow pointing toward the dark point in the center of the circle, the location of Triunfo post-office. Camarillo is just above the top of the present map where the state highway runs out to the left towards Ventura, just above the present part of this map. There is not quite enough here to indicate it. The word "Calabasas" appears twice along the state highway. The place where Calabasas proper is situated is the one to the

1477 east, directly beyond the final "Y" in "Highway."

Q. Does that map show the route running from the Decker place to the Triunfo post-office? A. That is not indicated here. I can mark that on in colored pencil if you desire. It is part of the yellow starting from just north of the Malibu Ranch line in Los Alisos canon, and running in a general northerly and a little easterly on the yellow line to a point on the "S" in
1478 "Santa Monica mountains," about the middle of the map, and meanders along over into Russell Valley.

Mr. Anderson: Do you object to his putting the general course on there?

Mr. Burnell: No, it will be understood, of course, that that is Mr. Scotton's opinion as to where it is.

The Court: You might do that later on, gen-
1479 tlemen. He might want to do it with a little more care.

(Continuing.) Cornell is about the center of the map, about where "I" in "Triunfo" is, and in the canon that results from the Russell Valley, in a southwestern general direction. I have drawn the circle around the junction, and written the word "Cornell" just underneath.

1480 *Cross-Examination*

By Mr. Burnell:

The top of the map is north, the bottom is south, the right hand is east, the left hand west. That is almost absolute.

Q. You stated that you had indicated in yellow the important roads; by that you mean the ones you personally consider important? A. I think I said, "Some of the roads." There is a road up Topango Canon running up from the
1481 beach, right through the canon, to the Ventura state highway. That is a wide, well-made and much traveled highway. I didn't put the yellow on there to indicate that road, simply from lack of time. I hustled pretty much to get this in. There is no yellow line indicating the road from the city of Santa Monica along the beach to Las Flores Canyon. That is a very much traveled country road, and a great many vehi-
1482 cles pass over it every week. I consider it an important road. The road which begins at Cornell and runs in a generally southwesterly direction with a number of different termini, one of which is marked "Nicolas Canyon" but what is really Los Alisos Canyon, goes at the terminus, nearest to the point marked Nicolas Canyon, about two-thirds of the way between the canyon and La Chusa, to, roughly, about Charley Decker's place. I have been over that road. To my knowledge it has been driven over once.

1483 I know that they have driven up part way in an automobile. I have driven, in a southwesterly direction, in a Pierce Arrow for about a mile or more to a place called Hot Springs. That is not shown on the map. The squares on the map, drawn by the parallel lines, represent a square mile. I am familiar with the grade of the road from Cornell to Decker's. I am not familiar with the degree of grade. I have been over it.
1484 It is a wagon road, regular mountain wagon road, just about wide enough for a wagon, with turn-outs at places. I would call it a steep road at places upon the road. With respect to the various branches of this road which leads from Cornell to Decker place, some of them are steep in places. All of them can be improved and made easily passable. I have been told some of them are steep and some are not. Away up in this canyon here it is not so steep. I have been
1485 over the road that is shown on the map running from Lobe Canyon south of the Ventura state highway and running in a general westerly and southerly direction past the point just below where the word "Stokes" is written. That road is very good in some places; poor in others. Up in this Cold Creek country, which is in the neighborhood of that road you have asked me to tell you about, there are a number of people live that I know—Sheriff Cline and Ralph Hamlin and Ed Wehrle, and many others, who drive

1486 automobiles and go in there to their places with automobiles up this road. That is not the road that goes up clear to the Crags Country Club. It continues around to the west or northerly, and then it gets over to the Crags Country Club, which is over here (indicating). There is one road in Liberty Canon, running from Grape Arbor on the state highway in a southerly direction, not indicated in yellow on the map. I have not marked that one simply for lack of time;
1487 and one at Calabasas in a southerly direction and one west of Calabasas. The road I have marked from the state highway, running out just below the letter "H" in the word "Highway," and proceeding southerly to a point near the word "Stokes," is longer than the road that runs down Liberty Canon. It would not have taken me as long to mark the Liberty Canon road as to mark the other. I marked the road
1488 running from the state highway and not the road up Liberty Canon, because the former happened to be in my mind, because I had recently traveled over it a number of times. That is the only reason I can give for having marked the one road and not the other; the point I have marked "Cornell" was the location of the Cornell post-office, the post-office for the district of the mountains to the south and to the west running away over into the extreme corner, I believe, of Los Angeles county, including all the

1489 territory in the Decker's and others, and along what we have termed—what has been mentioned here as the Decker road; besides the post-office at that point there is a library and school house, no town. At that point I have marked "Triunfo" is a post-office, store and residence. I think there is only one store there; there may be some other places, but I don't know.

Mr. Burnell: Mr. Anderson, while I think of it, Mr. Patton referred yesterday a number
1490 of times to Strawberry Park and he tells me he means Newberry Park, and I ask that whereever he referred to Strawberry Park that the word be corrected to read Newberry Park.

Mr. Newby: Yes.

Mr. Burnell: So it may be understood that yesterday, in Mr. Patton's testimony, wherever he referred to Strawberry Park he means Newberry Park.

1491 The Court: Very well.

(Continuing.) I don't remember what there is at Newberry Park. I have been through there; I don't remember whether it is a town of any size. I have in part marked in yellow the route taken by the road along near the Decker road running from Decker's place to the Triunfo post-office. The portions of that road that I have not so marked, as I now recall it, it would be at a point about southwest of the "S" in "Santa Monica"—the words "Santa Monica"

1492 indicating Santa Monica mountains, and running in a northwesterly direction until you get over near the Little Mathieson Lake, or Russell Lake, out in here somewhere (indicating), out in these alfalfa fields, and along over the Conejo road to the Russell ranch headquarters, and out in a northerly direction to Triunfo post-office. I did not make that in yellow for lack of time. I have the map right here with me. I can
1493 show you and put it on if you want to. My lack of time was not such as I marked only those roads, that I considered important. I said some of the important roads. Some of the roads I thought important I omitted because of lack of time. This lake which I spoke of is located on the map along in here somewhere on the Ventura side of the county line. The road from Decker's place passes over the mountain where the map shows 2076 feet. The road at that
1494 point is 1846 feet above sea level. Then it passes by this Russell Lake, and so on to the road indicated in yellow which leaves the state highway at Russell Valley as indicated on the map, where the elevation is *k*,000 feet, and then goes west. I think no portion of that road goes through private property—Well, I don't know whether the Russell ranch has deeded this roadway to the county or not. I understood that they had deeded a road from the Triunfo post-office to the ranch buildings, and also from a

1495 point in there, to the west end of their property, the road indicated running parallel with the word "Russell" is an old county road. I don't know whether all of the road which Mr. Decker would have to travel were he to leave Triunfo postoffice and go to his home, is a private road or is it public road. I know that the county has spent thousands of dollars. I know a point on the road to Decker's sometimes called Malloy Hill. The character of the road where it goes
1496 over the hill is a good wagon road. The county survey at that point is a 15 per cent grade. As to the actual road, I don't know. I think it would take a good strong team with a ton load to get up that hill. Two good horses could haul a wagon up that hill, I think, resting at the flat places on the roadway, at the present time. The place on the map marked in purple which lies just at the southerly extremity of a road which
1497 I have marked in yellow, which branches off from the road towards Cornell and Decker's is property owned by the Rindge Company; that is true with relation to all of the property marked on the map in purple—the Rindge Company and May K. Rindge. They have property here in Malibu Canyon also. (Indicating.) The part in yellow terminates at the Rindge property. It terminates there because the man who built it stopped it there. He stopped it there because he owned the property before the

1498 Rindge people acquired it. I can point out on this map where some of the so-called settlers live other than Mr. Decker. There is one other person living on the road leading from Charley Decker's house to the Russell ranch which you have asked questions about, out the Charley Decker road, which I was trying to locate. His name is Vaughan, and I think it is right near the point at which I have not continued the yellow Charley Decker road, from Triunfo post-
1499 office out at the end of this other yellow road which runs in the direction of the letter K in the word East Fork of Trancas Canyon. I think that is the property of Mabel Kellar near the end of the road marked in yellow that terminates at a point north of the Trancas grant line, of the Malibu Ranch, and directly north of the letter M in Malibu. That is the old residence of Marion Decker. His family is still
1500 living there.

Now, please point out the route that the family of Marion Decker would take if they desired to go from their place to the city of Santa Monica with wagons—all of the routes exclusive of airships. A. Star[illegible]g at their residence north of the grant line, [illegible]orth from the old Decker road two or three miles, then turn east, northeast to a point on the Triunfo Canyon road at the junction with Sierra Canyon from the old road that they used for

1501 a number of years, and the road over which they went to their property years ago, and continuing in a southeasterly direction to the junction of Triunfo Creek at Vejo Creek, over the Vejo road to the junction of the state highway at Vejo, then to Calabasas, over the old Calabasas road in a southeasterly direction, over the old Toponga road in a southeasterly direction past Toponga post-office down to the coast at the mouth of Topango Canyon and into Santa
1502 Monica and from there anywhere else they wanted to go. They cannot get over the county road at the present time because it is under a lake. It is under an artificial lake, but the way that they used to travel was as I would indicate, and then out over the Crags Country Club to the state highway and as before indicated they would travel over what is known as this point here near Crags camp, southeast of the Crags
1503 Country Club, down around Crater's camp, down to Cline's, out through—down through this canon here, over Russian Hill grade to the junction of the Old Topango road, and Russian Hill grade and then southeast to Topango post-office and the coast and from there anywhere else they wanted to go. I have traveled over those roads myself.

Q. Isn't it a fact that each of the roads you have mentioned contain a number of very steep grades that must be traveled either in going or

1504 coming, and whichever way you go, you go over steep grades? A. No steeper than many other grades in the immediate neighborhood.

Q. Isn't it very steep grades? A. Yes sir.

Q. Right here in Topongo Canon, the old road that leaves Topango post-office and runs north to Calabasas, isn't there an exceedingly steep grade there? A. Yes sir; and going up towards Calabasas. But that same grade has
1505 been used for thirty years; since they built the new road there is very much travel over the old grade, not so much as compared with the new grade. It is not a fact that it takes an exceedingly strong, high-powered car to make that grade. As to the road that Mr. Decker would have to travel going to Triunfo post-office, note that at some places the lines lie very close together as they cross that road.

Q. Now, can you tell us from reading those
1506 contour lines the raise or lowering of elevation that Mr. Decker would have to travel over to get to his house? What I mean is this: Starting at Mr. Charlie Decker's house, tell us how many hundred feet down he has to go or up, as the case may be, to get to Triunfo? A. That would only be a rough estimate, because I do not know the exact location of that road; but I do know that the country in the immediate neighborhood of the road would easily permit of the easing of any grade that is there; by re-

1507 building the old road or changing the course in a few places and getting a road that is much easier and would be much more desirable to travel than the present Topango road from the state highway to the Topango post-office. Mr. Decker's house is right about the "M" in Malibu, about where my pencil is. All that country in that neighborhood is what I would term a high mesa, and there are rolling hills there, and
1508 at various points they are going up and immediately coming down again. Starting from the Marion Decker house, the road goes on a level. I said that those contour lines indicated the same level and there was supposed to be a hundred feet difference between them. I found one contour line just about at Mr. Decker's house and another a little distance from it. That is a hundred feet apart. That runs neither up nor down. The road may run to the right or
1509 left of that contour. May go around on the contour and up, what might be termed a level road part way. Then it may strike a place where it would go down and strike another level place, and go up again and down, and rise over the entire mountain. I couldn't give in detail following Mr. Decker's road from the Marion Decker house, where he would come to a hill and what the use of that hill would be and where he would come to a down hill and what the descent would be. There are a number of settlers in some

1510 of those other canyons, Triunfo and Sequit and Nicolas, up in that mesa country. I couldn't point out the roads which go to their places, the actually existing roads which are traveled over and are capable of being traveled over. One reason that I cannot point them out is not the fact that they do not exist. I know not where Mr. Joseph Bodle lives or owns property, or Mr. Melvin Bodle. To save time, possibly I might state that you have the names of families there
1511 that I don't know where they live. I know some of them. I know Mrs. Elizabeth Haney. Her place, as near as I can point it out, is in the close proximity to that Sierra Canyon road. If I might make this suggestion, this country is all divided up into sections, half and quarter sections and halved and quartered again. Some of the people you are going to call my attention to may only own 20 acres or 40 acres; some may
1512 own 120 or 160. I think I cannot accurately enough place where those forties or eighties or one hundred and twenties may be on the map to be of much, if any, use; but if you wish it, I have an accurate record of about where they are and could mark them on as to the 40 they may own or the 120; but Mrs. Haney I could not put a mark. I would like to state about Mrs. Haney that it is in close proximity to this Sierra Canyon and Decker road. Whether it is in one

1513 section or the adjoining section, I couldn't state offhand.

The Court: Before we adjourn, Mr. Scotton, where is the Yerba Buena district? A. The Yerba Buena district is in Ventura county to the west and to the left of the green line on the map. Most of the people who live up there are west of the corner indicated here on the Ventura county line up in here. You will notice that there is a little mesa up here, right around there,
1514 around the word "canyon" in the word "Little Sycamore Canyon," just west of the Ventura county line.

Mr. Burnell: Now, directing your attention to that point, Mr. Scotton, I will ask you to make a mark showing the location of that settlement, as near as you can, and indicate it by number 2.

The Court: I think that may be done later.
1515 It is close to the hour of adjournment.

(Whereupon, an adjournment was taken until Monday, October 7, 1918, at 10 o'clock A. M.)

1516 Monday, October 7, 1918,

(Jury all present and in the box.)

FRANK H. JOYNER,

a witness called in behalf of the defendants, being duly sworn, testified as follows:

Direct Examination

By Mr. Anderson:

My present occupation is road commissioner of Los Angeles county; I have been road com-
1517 missioner since, I think, April 6, 1914, and as such I am familiar with the various roads in the county which are the public roads to which the county contributes in the way of maintenance.

Q. Now, calling your attention to defendant's Exhibit 6, which is a large topographical map showing that section of the county which is immediately adjacent to Ventura county, and
1518 calling your attention to the fact that the green line indicates the boundary line between Los Angeles county and Ventura county, calling your attention to the fact that the purple line indicates the exterior boundary of the Malibu Ranch or land, and calling your attention to the fact that the dark line indicates the state highway, the dark line just beneath the word "state highway," I will ask you to state to the court and the jury what public roads, if any, lie between the state highway—I will go farther. I call

1519 your attention also to the fact that this is the Topango road as indicated by the roads "Topango Canyon," and the yellow line. I will ask you what roads, if any, lie between the state highway on the north, the Rindge ranch on the south, the Topango Canyon road on the east, and the Ventura county line on the west? A. I don't think there is any legal—what we call legal highway.

1520 Q. Now, are there any highways in that section, to which, in the last three or four years, say from 1915 to this date, the county has been contributing in the way of moneys or upkeep? A. On the so-called Decker road.

Q. That road is located about where with reference to that map? A. Part of it is in Ventura county. In so far as Los Angeles county is concerned, that starts higher up. I don't know the exact location of the Decker

1521 road. I think it comes over from Triunfo down over toward—I think it is Nicolas Canyon over there on the west edge of the map. I could locate it on the map, I think, but I have maps in the office. It is a road which runs from the Decker settlement over to Triunfo post-office.

Q. Have you any idea as to the extent to which the county has spent money for its maintenance? A. Possibly two or three thousand dollars. I am not familiar with the roads in Ventura county immediately to the west of Los

1522 Angeles county. I have not familiarized myself at all with the section, so far as public roads are concerned; I have been through the old road, through the Russell ranch and into Cornell and over the state highway. Personally, I do not know whether or not there is any public road in Ventura county between the county line and the mountains to the west.

Cross-Examination

By Mr. Burnell:

1523 Q. I call your attention to the road which has been referred to as the Decker road from the point where the cross is marked on the map, which cross is immediately to the right of the word "canon," in "Nicolas Canon" and leads up, as shown by the yellow line to the point on the road that runs through Russell Valley; part of that road runs through the Russell ranch; does it not? A. Yes, sir. I do not know

1524 whether the road, or any portion of it, running through the Russell ranch is a public road. That would be out of my county, and I would have to look at our maps on which the legal roads are shown. I have in my office maps prepared by the county surveyor on which are roads that the county has determined are legal highways and in my operation I so consider them. I understand there are a great many questions as to whether some of them are legal highways or not. I am simply guided by what the county

1525 surveyor tells me. I have those maps. Those would be available and are available to the county surveyor. He has probably a more complete set than I have. I have never been over the road referred to as the Decker road here.

Q. Now, I call your attention to a road shown in yellow on the map, Defendant's Exhibit 6, from a place indicated on the map with a pencil circle and called Cornell, running east in a general easterly direction to a point directly
1526 north of the C in the word "ocean;" thence running northerly; thence easterly, and joining the old Topango Canyon road; thence running north to Calabassas (indicating on map). Have you been over that road? A. No, sir, not all over it. I have been in along the Vejo Creek. I have been into Cornell, and four or five miles out of Cornell. I think I have been generally there in a southeasterly direction, possibly a little bit
1527 farther in the same direction; perhaps along into there. (Indicating.) Indicated by a sharp bend to the south in the road marked in yellow leading from Topanga, or Topanga Canyon road, to very near to the letter "G" in the word "Goat" in the phrase "Goat Buttes." And the Vejo Creek road is the road that leaves the Ventura state highway running in a southerly direction and running from Cornell to Topanga Canyon at a point just west of the commencement

1528 of the bend just described. I was over that road two years ago. I couldn't answer that exactly, possibly the last time, two years ago. As to the condition of that road in regard to grade, I didn't notice any heavy grades on the road. It seemed to be an ordinary road. I think on that trip I was so much interested in getting the machine through the sand that I didn't pay any attention to the grade. There was much sand
1529 on the grade. The road would not be practical for the use of the automobile in the condition it was in. No work has been done on that road since that time by our forces, to my knowledge. If any work has been done on that road by the county, I should know of it. As far as I know, no work has been done on it. As far as I am at present apprised, the road is now in the same condition as when I went over it. I think that is not considered a public highway. That is a
1530 private road. I was there with Supervisor Pridham once. I have been over there alone in looking up the possibility of obtaining a legal right of way through there. I have never been up to any of the Decker places, the Marion Decker or the Charley Decker place. I was up on the top of the so-called Nigger Hill. I would say it is about three miles from Cornell. It is on the road leading from Cornell in a general southwesterly direction, and being the one shown on the map as Sierra Canyon, and lying about

1531 south of the letter "S" in the word "Sierra," just a little bit east of the "T" in the word "Santa Monica Mountains." I have been over that hill. I happened to walk from Cornell up to the Nigger Hill because I objected to riding a horse. I couldn't get there with the automobile.

Q. Was it impassable for automobiles? A. It is a pretty heavy grade, pretty steep, about twenty or twenty-five per cent. The character
1532 of the road with regard to the soil condition was at that time fairly good dry dirt. That was along in the summer, when it was hot. That was not a public highway on the county surveyor's map; so far as I am advised it is a private road. It could not be used for automobiles. It can not be used for hauling loads with teams. It is too steep. No change has been made in the road since I was over it, to my knowledge. So
1533 far as I am advised it is in the condition now that it was when I went over it. There would be no danger of Nigger Hill road being washed out from water. I went there for the purpose of seeing if a usable road could be developed from the top of what is called Nigger Hill down to Cornell. That is what I was there for, and I came to the conclusion that no such road could be developed with any such money which would be available for the use of the road department. There are no other roads besides those I have

1534 told you about that are shown on the map, that I have been over, except one, from Cornell up to Russell ranch. My recollection of the road, the grades were fairly easy, good usable dirt road over which we had no difficulty in getting through. I think we got the machine to Cornell and outside of opening a gate or two we went right through. We hadn't any trouble. We did not go beyond Cornell on that trip.

Redirect Examination

1535 By Mr. Anderson:

Q. You say that you came to the conclusion that you could not make a road from Nigger Hill with the money at your command. What did you conclude it would cost to make a passable, usable road? A. My recollection is fifty or one hundred thousand dollars to get from the top of Nigger Hill into Cornell. We simply looked at the country as we were going along,

1536 walking up and down the hill.

Q. Have you made any estimate as to what it would cost to put the so-called Decker road into good condition? A. We have those estimates in the office. I think I made an estimate around three thousand dollars, to fix the Decker road so it could be used by automobiles, down to Malibu Ranch from Triunfo.

1537 *Recross-Examination*

By Mr. Burnell:

Q. You say to fix the Decker road down to the Malibu Ranch road—was that from Marion Decker's or Charlie Decker's? A. Charlie Decker's.

Q. That is about where I am pointing. The Charlie Decker place is indicated on the map by a cross on what is called Nicolas Canon, but what is really Los Alisos Canon. From that
1538 point you say that the road would cost how much? A. I think around three thousand dollars.

Q. That would be a road leading from there down to the Rindge property wouldn't it? A. Yes, sir.

Redirect Examination

By Mr. Anderson:

Q. Did I understand you to say that that es-
1539 timate is merely from Charlie Decker's house to the Rindge property, or from Charlie Decker's house to Triunfo? A. My recollection is Charlie Decker's house, to the Rindge line.

Q. Did you estimate what it would cost to make it a usable road from Charley Decker's house to Triunfo, or the county line? A. At the time that the estimate was made, that estimate did not amount to very much because the road had been used; some of my men's machines had been through and up to Decker's

1540 place and the road could be developed down to the Rindge, for an additional two or three thousand dollars.

Q. Your men found the road to be usable for an automobile road from Decker's place and simply estimated from there to the Rindge Ranch? A. Yes, sir.

F. B. SCOTTON,

recalled.

1541

Direct Examination (Resumed)

By Mr. Anderson:

Q. Now, Mr. Scotton, since the adjournment of court on Friday, I understand you have put some additional data on this map, largely at the request of the court and counsel. I would like you to indicate what you have added there, and explain what it is, taking the pointer and going carefully over it so as to locate it in the record.

1542 In other words, wherever you have put additional marks on the map, indicate what it is, and by some means locate it so that it will appear intelligent to the man reading the transcript. A. The so-called Charley Decker road I have completed by adding in yellow a line running in a northerly direction from a point in about the center of Section 10 in Township 1 South, Range 19 West, running in a northerly direction just west of the letter "S" in "Santa," and crossing to the right of the figure 6 in elevation "2075," cross-

ing the Ventura county line. Then to the east of a green spot which marks the Little Mathieson Lake, and continuing on to the roadway running east and west to the Russell Valley. I have added that green spot just to the west of the Ventura line, which is the little Mathieson Lake, and to the west of that a larger green spot which is the Mathieson Lake, the large Mathieson Lake, that being on the old road I have just referred to, running east and west to the Russell Valley and Potrero Ranch. Next I have drawn a large light red oval in Ventura county indicating the settlement of the Ventura people there, what you call the Yerba Buena settlement, and that circle embraces a part of the word "Little Sycamore Canyon;" and the word "Canyon" in "Little Sycamore Canyon." Through that circle and running in a southwesterly direction, and another in a southeasterly direction, and another in a northeasterly direction, and another in a westerly direction, I have made some large red dots indicating a means of travel by the people that live in that settlement. When I saw it some years ago the means of travel was a trail. I have not seen it since. At the end of that trail known as the Triunfo Pass way joins on another yellow road that runs over into the Mathieson Village, Mathieson ranch building, where there is a store for trading purposes. The southeasterly route runs into the

Decker Plateau settlement. The westerly route runs over into what is known as Big Sycamore Canyon, and joins on to the Woods Canyon road running in a westerly direction over to the sea port of Hueneme. That last one I have referred to there—that last way—crosses what is known as the Guadalasca Broome ranch for part of the distance and the rest of it through many properties. That is a public highway, public highway in part. Public highway from Hueneme easterly. Just where the boundary line on the public highway stops, I don't know. I put some smaller red dots in the Sycamore Canyon trail, and other ways around that Little Sycamore settlement. The Little Sycamore settlement is the same as the Yerba Buena settlement. That canyon which is marked "Little Sycamore Canyon" is known commonly as the Yerba Buena. I have placed a number of figures in the centers of various sections, sections commencing at the north up near the boundary line of the Conejo Rancho. In Township 1 South, Range 19 West, I have marked Sections 2, 3, 4, 8, 9, 10, 11, 12, 14, 15, 16, 17, 20, 21 and 22. And it is in that immediate neighborhood where the Decker Plateau people live mostly. In Township 1 South, range 18 west, I have marked sections Nos, 7, 8 and 18. In a number of those sections I have made some red crosses to indicate where some of the people living in

1549 that country live, about which Mr. Burnell tried to ask me the last court day.

Q. Now, Mr. Scotton, while we are on the subject of those red crosses, you might indicate who the different people are that they represent, and I would suggest to the court that you take a red pencil and number them consecutively as you testify.

Mr. Burnell: I suggest that it would be a
1550 good idea for Mr. Scotton to furnish us with a list of the numbers and the names of the people numbered, then the court would have that.

Mr. Anderson: That is a very good idea.

The Court: He can do it as though he were making an index to his interlineations on the map.

Mr. Anderson: Yes.

The Court: He can do it in that way and then we will have the reporter's transcript.

1551 Mr. Anderson: Yes.

A. In section 4 I have put the red cross which ought to be down in section 8. I will remove the one in 4 and put one in 8. The red cross in section 8, range 19 west, indicates near the location of Louis Burger, marked 1. One in section 17, Andrew Humphrey, marked 2 in red. The one in section 20, Charlie Decker, key No. 3. The one in 21, Lulu Carr. I will mark that 4. The one in number 10, in the southwest corner, James Vaughn, No. 5. In the upper part of

1552 No. 10, Cecil Herron, No. 6. The one in section 15, Frank H. Thew, No. 7. Section 11, John Jole, No. 8. Another in section 11, southwest corner, Peter F. Roller, No. 9. One in the southwest portion of section 12, Cecilia Haney. Section 28, the Old Marion Decker place, No. 11. I have marked No. 28 under No. 21. Section 18 of Township 1, south, range 18 west the cross indicates Elliott Rumbo's. Marked No. 12.

1553 These are all the crosses that I put on. From Santa Monica along the coast to the easterly boundary of the Malibu Rancho, I marked the roadway in yellow, from the mouth of Topango canyon and the ocean. I marked the Topango canyon up to Topango post-office and in a northerly direction, between the new Topango road out to the state highway, just south of Van Nuys. I marked in blue the name Van Nuys. From the old Topango road from a point about

1554 a mile northwesterly from the Topango post-office I indicated the roadway that runs in a westerly direction from Jake Wood's place to Topango Canyon and Redrock Canyon. About a mile. From that point I put in half a dozen yellow dots indicating a partial connection between the two. With reference to the yellow mark just north of the city of Santa Monica, north of Santa Monica Canon I indicated the boulevard through Soldiers' Home to Los Angeles which is directly east of Soldiers' Home.

1555 From that point to Los Angeles, is about ten miles. I don't know exactly how far it is from the point where the state highway ends on the map at a point just east of Encino to Los Angeles. I think on an air line about 12 miles. From that point to Hollywood is about eleven miles. I have also indicated the Los Alisos proposed road in red, running from Lechuza beach at Lechuza canyon in a northwesterly and then
1556 northerly direction, up to the north boundary line of the Malibu Ranch. Also what has been termed in this case as the beach road, running from the junction point of the Los Alisos road north of what has been termed the main road in a southerly direction and then southeasterly to a point on the Pacific ocean. I have also lettered a canon to the west of what is lettered here as Nicolas canon. I have lettered the other as Nicolas canon because that is the true loca-
1557 tion of Nicolas canyon and will at some opportune time rewrite the old word Nicolas and call it Los Alisos. At the court's suggestion, that is. There was one other mark that you asked me. Where Camarillo was and I have indicated here up near the end, or stopping point, what is shown as the state highway, that is just at the top of the map, on an air line, the distance from that point to Yerba Buena settlement is about 9⅜ miles.

Cross-Examination

By Mr. Burnell:

The reason I put that air line distance was because air line distance had been referred to before. I don't know what the distance would be by public highway. I could not say whether, as a matter of fact, there is no public highway by which the people in Yerba Buena can reach Camarillo or any other point at the present time. I have not indicated all the highway in yellow and all the roads by which the so-called settlers can gain access to the main traveled roads. I have indicated some of the ways that they have traveled and can and do travel. I do not know of any public highway that leads to or from Yerba Buena settlement.

Q. Now, the lines that you have indicated on the map by heavy red dots, leading to and from Yerba Buena settlement, are not roads, are they, either public or private, in the sense of being used for vehicles? A. I believe some portions of them are roads that vehicles can use. The rest are trails.

Q. Are there any of those lines over which a vehicle could get to or from the Yerba Buena settlement, either to or from any public highway? A. They could, I believe, to the highways that Mr. Joyner has referred to as legal highways.

Q. Will you point out on the map, please,

1561 what roads persons in Yerba Buena settlement, desiring to get out of that settlement and on to any public highway could travel over with an ordinary team in order to leave Yerba Buena settlement and get to the highway? A. This way here. (Indicating on map.) Starting from the center of Yerba Buena Canyon, which is the Yerba Buena settlement, which is, I believe, Section 10, thence in a southwesterly direction over through the northern part of Section 19, then
1562 into the Decker Plateau and on to the Charley Decker road and to the state highway at Triunfo.

By Mr. Burnell:

On the map a part of that road is marked with a large red dot. I think it is a road, although I am not sure just how far it may run. I think it is a road. When I was up there, and looking in that direction, I saw a roadway going that way.
1563 I did not follow it. I have never been over it. All I know about it is from my observation of the engineers' map. The maps show an existing road into or out of the Yerba Buena settlement. (Witness indicates on map): I mean a roadway such as the people living in those mountains use to haul out the loads that they usually haul. I think it is not a fact that the people of Yerba Buena have to pack all their supplies in by horseback all of the way. They may, perhaps, a part of the way, some of them.

1564 Besides, the persons whose homes are indicated by the crosses and as to whom I have testified this morning, who own property or reside in the mountains and canyons immediately north of the Malibu Ranch, I know of others who own property there. Many of them only go there perhaps once a year, in the hunting season, and those people that I have indicated actually live there the greater part of the year. The various
1565 Kincaid families own property there, in those precipitous mountains and that mountainous country here east of Trancas canyon, between Trancas and Dume. I omitted putting a cross over their residences because I don't believe they live there. I know they own property there. I don't know how many families. There may be eleven Kincaid families that own property in there; I don't know. I do not know that there are at least that many. I think there is more
1566 than one family.

Mr. Burnell: Now, Mr. Scotton, calling your attention on the map to a designation here of Romera canon. Is that what has been referred to as Ramirez canon? A. Yes, sir.

Q. How far, if you know, does that north boundary of the Malibu Ranch lie above the proposed road that you have indicated, which is referred to as the main road, how far north of that road is the northerly boundary, at Ramirez canon? A. Over a mile. The boundary

of the Rindge Ranch at Latigo canon is about three-quarters of a mile north. It would seem that as shown on the map the distance is much less at Latigo canon than the distance between the proposed road at Ramirez canon, but I think I am a little high on the red line. I think the maps show that the nearest point is a little in excess of three-quarters of a mile. My location of the red line on the map is only approximate and it is a little high around Latigo. There are no other inaccuracies that I know of on the map, other than it is an approximate. The northern boundary of the ranch from the proposed main Malibu road at Escondido canon is a little over three-quarters of a mile. The northern boundary of the Malibu Ranch from the proposed Malibu road at Solstice canon is about three-quarters of a mile. The county survey is 1.9 miles from the Los Alisos bridge to the north boundary of the Malibu Ranch. That is about the same distance at Lachusa canon. The name of the canon that is shown on the map here between Trancas canon and Lechusa canon is Encinal canon. The boundary line of the Rindge Ranch from the proposed road where Encinal canon crosses the road is about a mile. The distance between the northerly boundary of the ranch and the proposed road at Marie canon is about a mile, and Puerco canon a little less than a mile; and

1570 Corral canon a little less than a mile. At Dry Canon the distance is about three-quarters of a mile. I mentioned the name of C. S. Herron and Fred Vaughn and Melvin Bodle. That is not Joe Bodle; it is Melvin. I don't know whether it is the same family but if they are it is part of the 160 there, they are all near. I have indicated the Joe Bodle place; I don't know whether the other Bodle place is near that. I do not know the name Crocker Auld. I know
1571 the name William Kelso; I think such a party is up there; I don't know. I do not know where the place is other than by reference to the map; the map I refer to is a map that has been made by one of the deputy assessors of Los Angeles county, upon which was marked the places where the people that lived in those mountains had their places. I think that Kelso's name was on that map. I think it is right around
1572 here in Section 17. That is what I refer to in some of my testimony as the Decker country. He has 160 acres there. I do not know Walter Kielhofer or Richard Mason. I think I mentioned Andrew Humphrey this morning. I do not know C. L. Wiess or any one named Klotzley. Keppler's, I know. They live on the upper half of Section 19. I didn't make any cross for the Kepplers. I didn't think about that at that time, I guess. I think that Keppler's name was on my list, but I marked on there the names

1573 of the people that this deputy assessor gave me as people who lived on their properties in the Decker plateau country. That is my reason for marking those on that I did mark, and also my reason for not marking other names that you have mentioned. I have heard of the name Sidney Melvin or Marvin. I think it is the same place where Keppler is, the same property. I made no mark for them. I did not mention the
1574 name of E. B. Parks this morning. I know of such a man. I don't know where Parks lives, except in Venice. I don't know any one of that name owning property north of the Malibu Ranch. I know a man by the name of Malloy who owns property with C. W. Middlecoff, a hardware man of Santa Monica, a member of the Santa Monica Chamber of Commerce, who told me that he had a place up in Section 3, and that he went there once a year hunting. The
1575 160 acres that Malloy and Middlecoff own is in Section 3, Township 1 South, Range 19 West, and the section through which the Charley Decker road goes. He simply told me that he only went there once a year hunting. He did not tell me that he didn't go there oftener because of the fact that there was no good road he could travel to get there. He has a road right up to his place and an iron gate across the road as you enter the place. I do not know Mrs. Shirley or E. M. Smashey. I don't know where Mrs.

1576 McClellan's property is. I do not know whether she lives up there, but I think there is such a party that does own property in that plateau somewhere. I know Frank See's place; that is not in the Decker country. I think that is east of Escondido. I don't know where the McClellan place is. I did not make any mark to show where the Malloy and Middlecoff place is because they do not live there. I know of Charles
1577 Foose. I think he has a place up there, but I don't know where it is. I do not know Frank Westgate. The only Moffet I know is dead. I do not know any property owned by the Moffet estate, or anyone of that name, or Ed Lewis; or Lawler or anyone of that name. I don't know whether there is a Jim Decker in addition to the Charlie Decker and Marion Decker. Joe Densmore,—I do not know that name. The road shown in yellow on the map leading through the
1578 Ventura county line through the Russell ranch, I would judge is a public road; at least a legal public road. I don't know because the county has spent money on it. I know the Mathieson ranch and Russell ranch people keep unlocked gates, with signs to close them. They are ordinarily kept closed. They have a lot of stock on the ranch. Where the road goes from the Ventura county line in a northerly direction, through the Russell ranch and out to the state highway at Triunfo postoffice is comparatively

1579 level country. There is a little stretch from the Ventura county line down to the Little Mathieson lake that is similar to practically all of the country in these mountains, that would require some side hill road work; but from the Ventura county line in a northerly direction there are no heavy grades at all. In places it is the same sort of land as the Malibu Ranch. There are different kinds of land. In a general way
1580 it is the same kind of land on the Russell ranch as the Malibu Ranch.

Q. Now, I will ask you to state, if you will, the distance between the northerly line of the Malibu Ranch, as shown by the purple line on the map, Defendant's Exhibit 6, and the road that is shown in yellow extending from the westerly branch of the Topango canon—what I call the old Topango canon road—in a general westerly direction through the circle marked
1581 "Cornell," and thence by the road shown in yellow to Triunfo postoffice. I am just taking the different points. All my questions relate to the distance between the road indicated in the last question and the northerly boundary line and different points. Now, if you will give us that distance in a correct line between Triunfo postoffice, running south to the boundary line of the Rindge ranch. A. That is about 8 miles, in a direct air line. The distance from Cornell postoffice is five miles. The distance directly north

1582 of where Trancas canon crosses to the road indicated in yellow, just below the word "Russell" is about three miles, to the Nigger Hill road; four miles from there to the road which runs through Russell Valley and seven miles in all; air line again. The distance from the road indicated at Latigo canon is about four miles; at Marie canon a little less than four miles; and at Malibu canon, just northeast, to the Malibu
1583 line, a little over two miles. This same road passes through Mathieson ranch; those are separate ranches. Portions of the land on Mathieson ranch, through which the road passes, is the same character as on the Rindge Ranch, and others are not. In general it is flat land and hilly land. There is more mountainous land on the Malibu, the peaks are more rugged and the back country is more rugged. On the occasion when I went up the road toward the Decker
1584 place in the Pierce Arrow as I indicated this morning, it was indicated by a red cross just below the word "Cornell." We went in from Triunfo postoffice and down through here and then up into Sierra canon, up to Hot Springs, and the road continued on from there and we turned from Hot Springs and came out at Cornell and then in a southwesterly direction and went out south road to the highway, at Vejo. The purpose of that trip was that Supervisor McClellan came to the Rindge Company's of-

1585 fice in the early part of his office career as a supervisor, and speaking about the road conditions in the Malibu mountains, indicated that if a road could be gotten through about the middle of the mountains, running from some point around Topanga Canyon, Topanga postoffice, in a generally western direction up into the Decker country, and tapping Ventura county, such a road would relieve the road contro-
1586 versy which had been in the courts for ten years and following up that thought I went out into that country, after having first examined the topographical map from Los Angeles to Ventura, and in looking at the map, I saw what semed to be a very natural way down Triunfo Canyon, over Russell Valley, in a southwesterly direction, to a point known as Mount Olive school house, and then from there to Jake Wood's place on the old Topanga road, down
1587 to Topanga postoffice, and then continuing on the Topanga Canyon road—

Mr. Newby: You said southwest. You mean southeast? A. Yes. Also connecting up with the Triunfo road, a roadway that I have traveled over and by running from Cornell, up Sierra Canon, first in a southwesterly direction and then in a general westerly direction passing Nigger Hill grade, and up into the Decker plateau, and continuing over into the Ventura settlement of Yerba Buena. After I examined the

1588 map I went over the country in a Pierce-Arrow
66, a very large car, starting from Los Angeles
I went to Santa Monica and went along the
beach to Topanga Canyon up the Topanga Can-
yon road to the Topanga postoffice, and up the
old road to Jake Wood's and over in a
westerly direction from Jake Woods up to
Topanga Glen, over through the subdivision
of Ruiz, in Red Rock Canyon, and about a
1589 mile from Jake Wood's, and then walked up
Red Rock Canyon to a trail, and along a
trail which led over the saddle that separates
Red Rock Canyon and Topanga, from the Cold
Creek country, and there saw a possibility of a
little short stretch of road which would connect
Topanga country with the Triunfo country.
Then I turned from Red Rock and went out on
the old Topanga road to the junction of Dry
Creek road, which leads from there down to
1590 Mount Olive school house, and from there, in
a westerly direction to a vineyard, the Leon
vineyard, I believe it is, and then follows the
old roadway following it with my eye, being
the roadway as marked on the ground, and then
returned, and went out the way I came in, out
to Calabassas, and then westerly on the state
highway to a point where it turns southerly—no,
westerly—pardon me—southerly, to go to the
Crags Country Club, and arriving at Stoke's
place, we went in the automobile about a mile, in

1591 an easterly direction, and then walked on the road and looked back over to the Mount Olive school house, along the roadway as is feasible on the ground. Returning to the Stokes place we went down over to the Crags Country Club and we could not get in any further because the old traveled way through the Crags Country Club has been submerged under an artificial lake. We therefore returned to the state high-
1592 way and continued in a westerly direction to Vejo on the state highway at one corner of the Las Virgenes ranch. We went in to the junction of the Triunfo Creek and Vejo Creek and then continued in a westerly direction and northwesterly direction to the Triunfo Valley, which is a broad valley, at the junction of Vejo Creek it must be a couple of hundred feet wide and as you leave the junction, it widens out to about 800 feet, and continued past to Cornell, and then
1593 out and up—out to the state highway at Triunfo postoffice, the entire distance from Triunfo postoffice back through the Triunfo country and over to the Mount Olive school house is through country that the grades, in my judgment, would not be much more than 3 or 4 per cent. I think that that explains my reason for going into that country.

1594 Afternoon Session, 2 o'clock P. M.

(Stipulated that the jury is present.)

GEORGE RILEY,

a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Anderson:

My name is George Riley. I live at Triunfo, Ventura county. I live on the Protrero ranch.
1595 That is the ranch commonly known as the Mathieson ranch and adjoins the Russell ranch, west of the Russell ranch. My business with reference to that ranch is manager. I have been such about three months; prior to that I was superintendent for about 15 months. That was my first connection with the ranch. I have been on the ranch altogether 18 months. There is no store on that ranch. There is not now a
1596 store in that neighborhood, where ordinary supplies are obtained for ranch purposes and things of that kind; nor nearer than Calabassas or Camarillo. There is none at Triunfo, just a few little things; but at Calabassas and Camarillo there are general stores. While I have been there, you could get a few things at Triunfo, but not any general merchandise. I am acquainted with some of the people who live up near the Rindge Ranch on what is known as the Decker section of the country. I do not know Charley

1597 Decker. I know Ernest Decker; I don't know exactly when I met him; I know the road commonly referred to as the Decker road from Triunfo up to Decker's place. During the period I have been residing on this ranch I have seen Mr. Ernest Decker using that road for the purpose of carrying supplies. He generally uses a two horse wagon and drives in and out with that. I know a man named Malden up there. He has been making use of that road also, since
1598 I have been there. He uses it for a two horse rig—wagon. I know a family up there by the name of Parks. They use the road also part way, and have while I have been there. They use it probably two miles or three miles on the range south and west from it. They drive over with a rig at times, and sometimes they go part way with a machine and then pack over, sometimes with a horse and wagon and sometimes
1599 with a machine and pack. The way I understand it, they haul to the foot of the trail and then pack over Triunfo Pass. I know a man by the name of Humphrey up there. I don't know whether he drives; I have never seen him on the road, only have met him at the store. I know a man by the name of Vaughan. He uses the road also; he travels it with a team, a two horse wagon. There is a party stopping near Vaughan's who has an automobile up in that section and uses the road, but I can't recall his

1600 name just now. He has a Ford. Besides those I have named individually that use that road with teams, horse and wagon, I think Mrs. Charley Decker drives, and Mrs. Haney. Both of those use the wagon road with a horse and wagon carrying supplies in and out. I know a man by the name of Peter F. Roller up there. I have never seen him go over the road only horseback. I do not know a family up there by the
1601 name of Bodle. I have seen people other than the ones that I know personally using that road, some with wagons and some horseback. I have seen some using machines on the road besides the two I have mentioned. They pass right by my place, in using that road. I know a family by the name of Harren up there. He uses the road, just afoot. He hasn't any stock that I know of. I know a man by the name of Threw. He uses it, driving over it with a two horse
1602 wagon. I know a man by the name of Arthur Auld. He goes over it with a Ford. I have heard the name of William Kelso up in that neighborhood. Louis Berger? No. I know Walter Kielhofer. He uses the road part way. I don't know for sure whether he goes over the grades or not. I do not know a man by the name of C. H. Weiss. I met one Kinkaid. I know the hired man that works for the Kincaids, a one-armed man. I met him several times horseback. I don't recall seeing him using

1603 a wagon. I do not know Mr. Keppler up there, or a Mr. J. A. Stuart, or a Mr. Malloy or Mrs. Shirley, or Mr. Smashey, or Mrs. McClellan, or Chas. Foose, or Frank Westgate, or anyone by the name of Moffet. I have heard of a Decker up there named James Decker, but I don't know personally whether he uses the road. I do not know Joe Densmore. In addition to those I have mentioned I have seen others using the
1604 road with a horse and wagon.

Cross-Examination

By Mr. Burnell:

I have personally been over the Decker road, clear down to the Malibu Ranch.

Mr. Burnell: This map (Defendants' Exhibit 6) is a photographic enlargement of the United States Geological Survey map, or quadrangle, enlarged so far as the large portion is concerned, eight times. It is an exact reproduction so far
1605 as all of the matter that appears on the original map is concerned, but Mr. Scotton, an employe of the Rindge Company, has indicated by yellow lines certain roads and by purple lines the boundary of the Malibu Ranch and by other places in lighter purple the lands owned by Mrs. Rindge or the Rindge interests; by the heavy red dots, ways or trails, leading into and out of what has been referred to as the Yerba Buena settlement, which is indicated by the red circle above Deer Canon. The state highway is the

1606 dark colored line and Mathieson lake is indicated by the large irregular shaped green spot lying just to the left as you face the board, to the west of the Ventura county line indicated by the heavy green line. The road which I am now pointing out from Triunfo postoffice, the line being a yellow line extending down through the Russell ranch and the Mathieson ranch, in a generally southerly direction, directly beside the
1607 "S" in the words "Santa Monica" in Santa Monica mountains, and thence curves in a generally southerly direction down the red "X" with the figure 11, which has been identified by Mr. Scotton as the Marion Decker place. Charles Decker's place is indicated with the red lines, and No. 3, and the place called Nigger Hill, I believe, is right in there (indicating on map). Nigger Hill, I believe, is right in there. Nigger Hill is indicated on the yellow line up here,
1608 on the road in Sierra Canon. Now will you point out the way that you traveled to the Decker place. A. We came over this Decker road as far as—or down in here somewhere, and then down through the bean field toward headquarters. I used a saddle horse. I am familiar with that road. I never went to Charlie Decker's place. I traveled over that road to the Ernest Decker's place in June of this year. I drive an automobile. I wouldn't say that the road I went over to the Ernest Decker place in June

1609 was a road which was passable for automobiles, so far as Ernest Decker's place, because we got off of the road and went alongside of the hills, we left the road in places probably a hundred yards. I could see the road at all times; I would not say that it was practicable for use of automobiles, traveling under their own power. You could get over it part way. All the way to Ernest Decker's place I would not say it was practicable. The road was cut up, the way I
1610 remember, and rutty and rather steep. It was very step, the grades were. I would not say that it was a road over which one team of horses could be driven, going up to Ernest Decker's place, carrying a heavy load, say a load of a couple of tons. That is because of the steepness of the road. I do not think that a ton could be hauled up by a team of horses. I have seen Mr. Auld driving a Ford as far as the Malloy place;
1611 probably a half a mile the other side of the Petrero ranch line. That is above Malloy Hill. When the Ford was driven to that point, as far as I know, it was taken on over to Mr. Vaughan's. I could drive to Mr. Vaughan's place with a Ford. The condition of the road to Vaughan's place is very steep. There were three people in the Ford the day I saw it. They were in it until they were over the steepest place on the Potretro ranch. The Ford traveled under its own power. I don't know about whether I

1612 would say the road to Mr. Vaughan's was a practical road for the driving of automobiles. Mr. Auld goes over there quite regularly with the Ford, not at all times of the year; I have not seen him in there only since spring. I have actually seen Mr. Auld in there with a Ford three or four times during the 18 months I have been connected with the Mathieson ranch. I have never seen him drive up that road with an au-
1613 tomobile or with a Ford in the winter time. I do not know what the grade of Malloy Hill is. The road that is through the Mathieson ranch, when you get to the south line, the county road that runs through the ranch to the south line is rather rough and steep. It is a private road, belongs to the Mathieson ranch. People simply drive through there at the permission of the Mathieson ranch. That same road goes on to the Russell ranch; that is not a private road;
1614 that is a county road through the Russell ranch, and a private road through the Mathieson, part of the way where the Decker road turns out running south. The portion of the road on the map that is a private road is from this point to this point; that is, the line of the Potrero ranch (indicating a portion of the so-called Decker road from the heavy black line just where the road crosses that line near the figures "2076" indicating the elevation, a little bit above the "S" of the word "Santa Monica" in "Santa Monica

Mountains;" thence in a northerly direction crossing the Venutra County line, to a point on the road marked in yellow, running in a general westerly direction, and between the Ventura county line and Mathieson Lake, as delineated by the green markings placed there by Mr. Scotton). That is a private road. When I took this trip past the Ernest Decker place and down on the Malibu Ranch, Mr. George W. Mathieson and Mr. Sprague were with me. The purpose in general of the trip was looking for some cattle. We went on to the Malibu Ranch. The general character of the territory that we tramped over on that portion of the trip during which we were on the Rindge ranch, as compared with the other portion indicated, part of it is mountainous, similar to part of the Potrero land. After you get on the Malibu Ranch, part of it was in beans. Some of it cultivated; there is some on the Mathieson ranch, about similar. The mountainous land on the Potrero ranch is probably a little rockier and steeper, part of it, I would say that in general the character of the country on the east side of the slope of the Santa Monica mountains going north towards the state highway—that the land on that side is some steeper and more mountainous than coming down to the ocean on the Rindge side.

1618 *Redirect Examination*

By Mr. Anderson:

I came down the canyon that is shown on this map (Exhibit 6) just below the Ernest Decker place. After we passed we went through an old gate right below Ernest Decker's place and then we came down the point of a ridge where an old road runs down. That is the way we got on to the Malibu Ranch. With reference to this Malloy Hill that is a very steep grade, one of
1619 the steepest grades on the road. The county of Los Angeles has never done any work on the portion of the road in the Mathieson ranch called private.

Q. As far as that road is concerned, which you say you saw, that Decker road which you say you saw, it could be put into shape, couldn't it, for automobile travel, without much trouble? A. I don't think to follow the tracks the road
1620 is in that it would be very practical. I think they would have to change some little points in it.

A. J. OTIS

(Recalled in behalf of defendants.)

Direct Examination

By Mr. Newby:

I have made an estimate of the cost of fencing the road with four barbed wire fence. I have also estimated the difference between cost of a fence as I estimated before and four

1621 barbed wires. I have the result of my investigation. This is a correct copy. (Producing document.) There are two items of labor and insurance I didn't put in the other copies. This is for a four barbed wire fence. 320 posts to make the posts 16½ feet apart, 30 cts., $96.00; 20 extra posts and braces, these posts to be seven feet long, at 35cts., $7.00; tar and tarring the 340 posts, 10 cts. each, $34.00. Now, labor,
1622 11 cts. per lineal foot, $580.80. 35 lbs. of staples and nails, also the barbed wire, 1515 pounds, 7 cts., $106.00. Now the freight for the wire and the posts and so forth, 9,055 pounds at $6.00 per ton delivered on the job and $2.00 for distributing, $36.22. Those items added together with the additional saving on insurance and on labor, $13.06, makes $873.08. It would be a saving to the owner of ten per cent, $87.30, that makes the—no—that is the overhead—that
1623 makes the total cost, four barbed wire fence as estimated for the job end to end, $960.38. In my opinion that would be the reasonable cost of building a four barbed wire fence on the Malibu Ranch along this proposed highway. I consider that a fair estimate for the cost and the labor per mile, for the entire job. The judge asked me to make an estimate of how much less it would cost to put one barbed wire above the woven wire rather than two. I did that, and I find on the straight fence where it is to be

straight and no difficulty of construction, I find that it amounts to a difference of $40.63 a mile. If you put one wire instead of two there would be a saving of $40.63, that is a part of the fence where it is easily constructed; then where there are curves and the ground is rough it takes a higher price for that fence; I estimated there would be a saving of $63.06 and on the roughest ground about four and a half miles, and I estimated there would be a saving of $119.34 for each mile.

Cross-Examination

By Mr. Vallee:

A four barbed wire fence I estimated the posts 6 and a half feet long as sufficient, for the curves, seven foot long. It would be an advantage to have longer posts to put in where it is necessary to brace the posts; it would go deeper in the ground. In my estimate of the kind of wire to be used I specified four strands genuine Glidden. Genuine Glidden barbed wire is a barbed wire generally used for stock fences; it is the heaviest barbed wire. It weighs 13 4/10 pounds to the lineal foot. That is the heaviest kind of barbed wire made. That is the heaviest I know. It is the wire universally used for stock fences. They do not manufacture a three strand Glidden; not that I know of. They do a two strand. That is the wire which I specified and is called Glidden, two point Glidden. There

1627 are a number of different weights barbed wire. This Glidden barbed wire which weights 13.4 pounds is one; then there is the Lyman barbed wire which is a 4 pound wire and there are others which are painted, having the same weight, and there is the Waukegan barbed wire which weighs about 18 pounds to the foot. Also there is a much lighter wire which only weighs 23 pounds to the foot. I mean a pound will ex-
1628 tend 23 feet of 18 feet or 13.4 feet. There are no other weights of Glidden wire manufactured besides the ones I have specified. There is lighter weight, but they are not called Glidden barbed wire. All these wires are manufactured by different companies in different weights. In making the estimate, I have $2.00 per ton for distributing. I did not include the distributing in the labor. I considered that as a part of the bill for hauling. My estimate of the labor is
1629 the actual building of the fence and getting the men forth and to the job. I estimated compensation insurance in this four barbed wire estimate. It is $13.05. The labor estimated for the whole job would estimate 11 cents a lineal foot or $580.80. Compensation insurance on that amount at $2.25 is $13.05. I made a statement that it would be a saving to the owner of 10 per cent and then changed it to mean a difference, in the overhead, of 10 per cent, by saying that it would be a saving. I mean that in

1630 this other figure here, I made a mistake, in these other estimates it is of a woven wire fence, and the judge asked me—with two barbed wires above—and the judge asked me to submit a figure with the one barbed wire only, and in doing so there is a saving there of labor, and barbed wire, and of course on the original estimate the owner would save the 10 per cent, which would add that much. That is what I meant by 10 per cent. saving. The second sheet
1631 is an estimate between the price of the woven wire fence with two barbed wires, as I submitted here, and with one barbed wire. I figure this 10 per cent, $3.78, because we save the owner $37.85 on these items and in the original estimate we charged 10 per cent. profit and overhead, consequently if we save the owner that much we must give him credit for the 10 per cent., otherwise he would be paying it just the
1632 same.

Redirect Examintion

By Mr. Newby:

The Glidden wire on which I placed my estimate is the quality of wire that I regard as necessary for the purpose of fencing that ranch. An inferior quality would not answer the purpose, in my opinion. It is too light.

1633 F. B. SCOTTON,

recalled.

Cross-Examination (Resumed)

By Mr. Burnell:

I was telling this morning about my trip in the Pierce-Arrow. I traveled over the Topanga Canyon to Jack Woods' place. On that trip I took the road that leaves the old Topanga canon road and then runs westerly and then
1634 southerly, as you are indicating with the pointer, and brings you down to a point immediately above the word "creek." That was called the Dry Canyon road. And then I went westerly. Then instead of taking the turn south and going over in the direction of Sheriff Cline's place, I retraced my steps to come out on the state highway and to get in from the Stokes end. I then retraced my steps, so to speak, and went back up the old Calabassas road into Calabassas, and
1635 along the state highway, and then back the next road shown in yellow on that map that runs through Los Cahuengas and down to the Stokes place. Then from there I went east about a mile. But I didn't travel the intervening distance with a machine between the property east of the point that I reached in the vicinity of the word "Creek," the farthest point west, and the farthest point east that I reached from Stokes, because that intervening distance is over an old traveled way that is not now in use, but is what

1636 I was thinking of at that time as the most logical position for a through road. It was not at that time when I went over it a road that was in condition to drive an automobile over. Then I came back to Stokes. I did not go back to the highway again; I continued westerly into the Crags Country Club, about where the word "Goat Butte" is. From there I returned and out the Las Virgenes road and along the state
1637 highway to Vejo, then south to the junction of the Vejo and Triunfo; then westerly and northerly towards Cornell. From Cornell on, that first trip I was telling about, I went in a northwesterly direction up to the Triunfo postoffice, and to the Ventura highway. In each case after reaching some point on the road that is shown on the yellow mark indicating the road, which is shown on the map, that extends from the old Topanga Canyon road in a general westerly di-
1638 rection, each time I went back to the state highway before I went to the next point. When I finally reached the point marked "X" in "Sierra Canyon," the farthest point reached by the Pierce-Arrow, I turned around and went back on that trip. The machine traveled on its own power the whole of that trip. I didn't have to be towed at any point. I didn't go any farther when I reached the point marked "X", which was the farthest point we went, because we had a pretty cold hour, starting early in the morning

1639 and getting home late at night, to cover the distance from Los Angeles to Triunfo postoffice and those side trips, and to get out. We discussed the various points along the way, so at the time I reached the Hot Springs we did not go any farther. It was not because the machine could not be driven any farther that we ceased to go on. I don't know just how much farther a machine could go forward toward the Decker
1640 place, but I do know that the Brewster road leads in a southerly direction for several miles. That is the road that runs from Cornell directly south, down to the Nigger Hill right about there (indicating). Then over to your east; then south in that direction, the old Brewster road. I have never traveled over that with this Pierce Arrow, nor with any other automobile. That is not an automobile road. That is a wagon road. This Pierce Arrow machine is the same
1641 one that I had when we were out with the jury the other day, one of the two. A large gray car. It is a six. I don't know the horse power. All Pierce Arrows are powerful. It is not an unusually powerful car. I think a Ford will go almost any place it will go. I had been out with the Pierce Arrow before. The other cars that were used on this trip to the ranch with the jury, I think were six-cylinder Studebakers. I don't know what horse-power they were; I imagine they are less than the Pierce Arrow, although

1642 they went wherever we went with the Pierce Arrow on this particular trip. I think we traveled over several grades that were steeper than the Nigger Hill grade, and steeper than the Malloy grade. As we went down into the canon west of Los Alisos that was a short grade, I think it is in excess of a hundred feet. At Malloy Hill there are a number of grades, the number of stretches of grades, and resting
1643 points at the tops of them. The longest stretch of steep grade on the Malloy Hill is fifty or a hundred feet; I think not more than that. The Nigger Hill grade would be longer. I am not in a position to state exactly how long. In giving the various distances between the different points, for instance such place as Camarillo and Oxnard and Hueneme that I give the distance of, that was based upon actual measurements that I made from scale measurements on the
1644 topographical maps. No measurements on the ground in an air line or by the road. I had no surveys made. Some of the roads in the Triunfo I have marked off with a tape or something of that sort. I also know the surveyed distance by the county from the Malibu Ranch line to Triunfo postoffice; I mean the county survey of what we have been terming as the Charlie Decker road. I have inspected that profile map and other maps in the county surveyor's office and have taken off the distances and grades and ele-

1645 vations. It is the survey of the road that exists there now in places, and also as to the portion that a previous witness testified to that would undoubtedly have to be improved somewhat to make it a good first-class automobile road.

Redirect Examination

By Mr. Anderson:

The Pierce Arrow car that I have been asked about is much heavier than a Ford and much larger. I made some other air line measure-
1646 ments since the last adjournment between Friday and this morning, but I did not put them on the map. I just simply put a light pencil line that might be traced. I found the distance from the center of that circle there at Little Sycamore Canyon, to the town of Hueneme, as shown on that map to be 14 miles. The town of Hueneme is a harbor city on the Pacific ocean. I found the air line distance from the same point within
1647 the center of the circle to the town of Oxnard to be 14½ miles. Also 18 miles to Santa Paula. Santa Paula does not appear on the map; it is just above Oxnard. 7½ miles to Newberry Park. I am using a topographical map of the section from Los Angeles to Ventura. A government topographical map, the one on which I made the measurements. 5½ miles to the store at Mathieson Village, or Mathieson ranch buildings. 9½ miles to Triunfo postoffice; 27½ miles to Santa Monica. I think we mentioned

1648 the 9⅜ miles from Camarillo. Those are all I measured.

Mr. Anderson: Now, if the court please, and gentlemen, I am going to take up another line of examination with Mr. Scotton. It is not redirect, but it deals with the actual condition on the ground.

By Mr. Anderson:

I am thoroughly familiar with the Malibu
1649 Ranch and every portion of it—very much so, I think, and I have been over this entire proposed right of way for these three roads, and have followed the right of way of the main road from Las Flores Canyon on the east to the Ventura county line on the west, and I also noticed the various objects over and through which that right of way passes and the general nature of the country. Commencing at Las Flores canyon, from there to the point on the map indi-
1650 cated Malibu Creek, before the road takes a dip down, which is Sweet Water Canyon just east of Malibu wharf and warehouse, and the nature of the country where the right of way runs, is comparatively flat, level country and soil. The right of way between those points runs, roughly, about 100 to 150 feet from the ocean. That section of the ranch is not yet under cultivation in any way. It is at present used for grazing sheep and cattle, principally sheep. Sweet Water Canyon is where I have written the words

"Sweet Water Canyon" and Winter Canyon is where I have written the words "Winter Canyon." The proposed right of way from Sweet Water Canyon to Winter Canyon commences at Sweet Water Canyon and running from there pretty near to Malibu Canyon, the mesa or bluff comes down fairly close to the ocean and just between the bluff and the ocean at or just west of Sweet Water Canyon, the Rindge Co. has a large galvanized warehouse with spur tracks from the railroad on the south side of the warehouse and other tracks running out on Malibu wharf just west of the warehouse. This right of way passes through or along the right of way of the railroad and those spur tracks, up to or beyond the wharf and then continues around the point of the bluff or mesa land and just east of Malibu lake which is at the point here, which runs out into the ocean. Before you get that far, there is a small house commonly known as the Gate house, also a fence and gate at that point. That right of way takes in both the gate and the house. After we pass the point that I have last described, which is where the road goes from that bluff, at the entrance to Malibu canyon, the road turns to the north and runs for several hundred feet and passes through a round cattle corral. The road takes about half of that cattle corral. That corral is about 80 or 90 feet in diameter. It is a circle. The fence is

1654 of heavy posts and heavy side boarding to hold back the cattle. Leaving the round corral the road takes in a bend to the left and the west and crosses Malibu Creek, then through some cultivated land. It has had crops of potatoes and corn growing upon it, and then it continues over the cement pipes irrigation system into the bean field—simply crosses the pipes. I don't know whether there was an excavation there or not. The pipe where it crosses is a 16-inch pipe.
1655 Then it goes on into the bean field, then goes across the flat about half a mile. From Winter to Marie canyon the road runs half way on the present roadway two or three hundred feet, to the bridge west of Winter Canyon. That portion of the road does not run through any cultivated land from Winter Canyon to the bridge but from the bridge just west of Winter Canyon to Marie. The road goes in a westerly direction
1656 over the mesa to Marie, and on that land are beans. For a distance of six or seven hundred feet the road runs through the beans. The land I have been describing up to the present moment is the M. K. Rindge portion. From there on it is the Rindge Company's. In the M. K. Rindge portion there are 1,846 acres, more or less. The greatest distance from the ocean, of any point on the road, on the M. K. Rindge portion, is about half a mile; that is where it crosses Malibu flat, and also it goes some distance inland at

Marie Canyon as indicated on the map. As you leave Marie Canyon you go up on the mesa land, between Marie and Puerco; that is beans—cultivated land, where the road goes through. I am somewhat familiar with the extent of these various patches. I have a map of the true survey of all of them. Offhand, in that Winter Canyon mesa, between Winter and Marie, I would say there was 9 acres. Right in the Malibu flat there is 200 acres. That is where the road runs entirely in beans. The road does not run into our lemon orchard, but we have other cultivated land above that. The nature, generally, of the cultivation in there is intensive, beans, alfalfa, corn, lemons, potatoes, all kinds of vegetables, between three and four hundred acres. On the mesa between Winter and Marie there is about 90 acres in beans. In the stretch between Marie and Puerco there is about 20 acres in beans and the road runs along the front portion of it. The distance of the road there is about half a mile; then between Puerco and Corral Canyon about two-thirds of the distance is across cultivated bean land. The entire distance is a little over one-half mile. The remaining one-third is outside of the cultivated land, pasture. From Corral to Sosto Canyon the road turns to the northwest in Sosto Canyon. It is called Solstice also. That is the one referred to as Sosto. Dry Canyon goes over the other way. Sosto comes down

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1660 to the ocean. I put the word "Sosto" there to indicate it so we will have it on the map. From Corral to Sosto it runs on the front portion of a little mesa land that is between Corral and Sosto. That is not yet cultivated. That distance is about a quarter of a mile, a little over a quarter of a mile. At Sosto it goes back into the mountains, into the canyon, along the steep west slope of Sosto Canyon. As the road goes
1661 into Sosto Canyon it continues along on the west steep bank and is quite regular, although there are many wild oak trees and trees of other varieties that this right of way passes through. It traverses along that bank about a quarter of a mile and then goes over a ridge into Latigo Canyon, and traverses from that point to Latigo Canyon on a steep side hill. There is no cultivated land there. Then it goes up a sharp draw. It goes up on the south side of the draw,
1662 which is a portion of Latigo Canyon and goes over a saddle into Escondido Canyon and traverses along Escondido Canyon on the bed of the canyon, somewhat, but there are many large, wild oak trees and other varieties along that right of way and the cut and fill portion for the additions to the main portion of the highway. The cut and fill portions take more than the 40 foot right of way, that is in addition to the 40 foot right of way. As you leave Escondido canyon you go over a ridge on to rolling land back

of the flat mesa land, lying between Escondido and Ramirez Canyon, the point where we strike that rolling land is about there (indicating). Just east of where the "I" is in this word "Malibu"—continuing in a generally southwesterly direction to a point beneath the "I" in the word "Malibu" at which point is a tented enclosure, which is termed on the county survey map as marsh land. The right of way passes through that. The fence there is just common fence to keep the stock out of the marsh. The size of that place marked marsh land, where the road runs through it, is 50 by 100 feet. Before you get to the marsh land there is a short stretch of cultivated land to the east of it and as you leave the marshy spot there is cultivated land all the way to Ramirez. From about the point of the letter "I" in the word "Malibu" all to Ramirez Canyon is cultivated land. The nature of the cultivation there is beans and barley. Through that the proposed right of way runs for a little over half a mile; and when you come to Ramirez Canyon the road comes out of the bean field and into the canyon. Nine-tenths of that is beans. There are some ravines intervening there, of course, which are not cultivated. After leaving the bean field at the east of Ramirez Canyon, the roadway proceeds in a northerly direction down into Ramirez Canyon for a distance of about several hundred feet, and then across

1666 the canyon and comes up to the mesa land on the west side of Ramirez Canyon at a point about 200 feet north of the railroad trestle. The railroad trestle is near the mouth of Ramirez Canyon. The right of way first goes down into Ramirez Canyon and goes up on the west side and is at present occupied by numerous live oak trees. As you enter the bean field at the top of the canyon there on the west of Ramirez, you follow the present roadway almost entirely; that
1667 is, the present ranch roadway across Dume mesa. Sometimes it is on the roadway, sometimes 20 or 50 feet to one side or the other, but it meanders back and forth over the present right of way. In Walnut Canyon the present ranch roadway is on the east side of the canyon most of the way, whereas the right of way is over on the west side of the canyon. On the map (Exhibit 6) that canyon is about under
1668 the "L" in "Malibu" (witness marks on map) and that is known as "Walnut Canyon." The present wagon road runs down the easterly slope of that canyon, and the proposed road goes down the west of it, crosses the canyon, that is, until you get about half way up in the canyon. Then the present roadway crosses over to the westerly side of Walnut Canyon. From the point from the west side of Ramirez Canyon until you get to Walnut Canyon, the land that the right of way passes over is cultivated land,

1669 at the present time, cultivated to barley and oats. That distance, approximately, is about three-quarters of a mile. And then passing that, after you come out of Walnut Canyon, from there on to the east side of Dume Canyon, or Zuma, it passes through cultivated lands that are now growing barley and oats, for a distance of about half a mile. As you leave the cultivated land on the mesa on the east side of Zuma Canyon, the right of way runs in a southwesterly direc-
1670 tion down into the bottom of Zuma Canyon, which is a broad, level canyon running from the ocean back about a mile and a half. This point right here directly under the letter "L" in "Malibu" is the point at about which the right of way reaches the bottom of the canyon near the ranch buildings. Then the road continues down the present ranch road for about 700 feet and then makes a turn and goes in a northwesterly direc-
1671 tion across an alfalfa field. Across that is about 400 feet. After you leave the alfalfa field, at the east bank of the Zuma Canyon, we pass through that 10-inch pipe line, of the water system—pass through it, along it, and over it for a distance of about a couple of hundred feet—a 10 inch steel pipe line. That is the main pipe line of the water system, delivering water from the 75 horse-power pumping plant which we have up in the canyon about a half a mile, and used for irrigating one hundred acres of alfalfa in

Zuma Canyon. When you get to the west bank of Zuma Canyon the right of way takes in along the pipe line to a cement standpipe in the irrigating system and proceeds in a southwesterly direction along the line of this cement irrigation system, in which distance there are three cement standpipes. The first one taken in is about four feet high, and four feet square. The second standpipe is about 9 feet high and 3½ or 4 feet square and the third standpipe is about 4 or 5 feet high and 3½ or 4 feet square. In Zuma Canyon flat there are about one hundred fifty acres of land, with a slight drop to the ocean, and it is quite thickly covered with immense sycamore trees and other trees, and this right of way passes right through a number of those large sycamore trees. The distance of the right of way through there is a couple of hundred feet. I don't know exactly what it would cost to remove that pipe line, the standpipes, and place them in other locations. I know the character of the country and about where the pipe line would have to be put in order to cover the land for irrigation to get it out of the right of way, and that would necessitate undoubtedly heightening the boxes further up the hill and it might necessitate it being changed considerably. The irrigation system for the irrigation of the canyon was surveyed by competent engineers and laid out in its present

location at a cost of about twenty-five thousand dollars and to make any changes in any portion of that system might necessitate large changes in the balance of the system. There is nothing else that necessitates changes but fences and alfalfa fields. Passing on from that point after it goes above the water system, the road makes a turn and goes up a draw and across the land that is in cultivation at the present time with beans, to a certain extent. There are little ravines which are not cultivated. Through several hundred feet of cultivated land, that brings it to a canyon termed Hog Flat. From Hog Flat the right of way then goes down on the beach. I have indicated on the map the "Hog Flat." In that distance from Hog Flat to the beach, the land is cultivated in beans. The distance through that flat is several hundred feet; then the right of way goes along the base of the bluff for about—a little over half a mile. In that distance of one-half a mile, it is approximately 150 feet from the high tide line. It then reaches the east edge of Trancas canyon at the mouth, and then goes over the top on the cultivated land for a distance of a hundred feet or so. The nature of the cultivation there is beans. Then it crosses the canyon, just south of the windmill and I think the right of way at that point evaded the windmill. It does not take in any personal property in that canyon—yes it

1678 does, I think it goes across some watering troughs which are supplied from the tank; one long string, about 75 feet long, built of wood. After you get to the westerly bank of Trancas, the right of way then proceeds in a westerly direction to the base of the bluff and proceeds along the base of the bluff from Trancas canyon to what has been termed Steep Hill Canyon.

Q. Will you put that on the map.

1679 (Witness draws on map, Exhibit 6.)

Now, that land under the bluff there is not cultivated? A. No, sir.

(Continuing.) That is about the same relative distance from the ocean that the other stretch east of the Trancas is. The next canyon west of Steep Hill is Encinal.

Q. Indicate that on the map. (Witness draws on map, Exhibit 6.)

(Continuing.) The right of way crosses the 1680 mouth of Steep Hill canyon, and for a distance of about two or three hundred feet is along the base of the bluff, and when it gets up to the top of the mesa land, which is at the present time under cultivation to beans, then it runs through about the middle of the beanfield over to Encinal canyon. The distance from Steep Hill through the bean field to Encinal is a little over half a mile. From Encinal it traverses part through the center of the upper half of the bean fields all the way along to Lechusa. There are

a number of small canyons in between Lechusa and Encinal, but the right of way for the most part is in the cultivated areas. That distance is a little over a mile. With reference to the present private road across that particular mesa the right of way at a few places follows it, and other places north of it, and most of the distance it is south of it. At Lechusa Canyon there is a bridge, a ranch bridge, and northeast of it is a reservoir used to irrigate the alfalfa land to the south of the present roadway; and at the bridge on the westerly end of the Lechusa bridge, the right of way of the main road runs a little southwesterly across the alfalfa field to a corner in a fence—an obtuse corner in a fence that encloses the alfalfa field. Of the proposed right of way in that alfalfa field the distance is about an eighth of a mile. The distance from the northerly boundary of the proposed right of way to the northerly edge of the alfalfa field is about 50 feet, or a little more; about 75 feet. You then reach a point there at the Los Alisos canyon. That is the point where the two smaller roads reach the main road in that neighborhood; the one from the north and the one from the beach. From Little Alisos to the real Nicolas Canyon, the name of which appears on there in my own handwriting, the right of way passes through cultivated lands, cultivated to beans, part of the way on the present ranch road, most of the way

1684 south of it. The distance through that bean field is a little over three-quarters of a mile. From Nicolas canyon the right of way is in the cultivated land nearly all the way to the canyon of the Arroyo Sequit. From east of the bank of the Arroyo Sequit the distance from the western bank of Nicolas is about a mile and a quarter. The present private road there with reference to the proposed right of way is mostly
1685 above the proposed right of way. After you reach the Arroyo Sequit, the road from the east bank of the Sequit crosses bottom lands, on the Sequit. In that area there are a number of large sycamore trees and others in that right of way, and the roadway then bends to the southwest across land that has not recently been cultivated, and continues along to the Ventura county line. There is a portion of it in that last territory that I have described that is practically
1686 down under the bluff. Commencing at the west line of the ranch and going easterly toward Sequit point, there is about six or seven hundred feet at the base of the bluff. With reference to this proposed right of way the private ranch road crosses the Ventura line about 300 feet north of it. There is no road of any kind whatever extending from the west end of the proposed right of way and connected with the west end of the proposed right of way to the west end of the Rindge property. [illegible] is no road

1687 whatever from the Ventura line to the west end of the ranch except the private road that I have referred to. Coming back to what we call the canyon road, the Los Alisos road, I have been up the proposed right of way to the ranch line. Commencing at the point where it intersects the main road, the Los Alisos road, so-called, commences that the westerly end of the Malibu Ranch bridge at Lechusa canyon and proceeds
1688 along the Malibu Ranch road, private road, for a short distance and then commences to skirt the side hills going in a northerly and westerly direction,—the side hills of the mountains, side of the mountains, along the east bank of Los Alisos Canyon, and continued along the east bank of Los Alisos Canyon practically all the way, I believe,—all the way, climbing around and taking double switchbacks to get up to the Malibu Ranch line, the distance being, according
1689 to the survey, one and nine-tenths miles, rising something over 1,000 feet in that one and nine-tenths miles. The nature of the country, in a general way, is rough pasture land; rough mountain pasture land, in places very rocky and very steep and precipitous. I have a photograph I took of the exact point where the county survey for Los Alisos road ends on the north boundary line of Malibu Ranch. That is a correct representation of what it purports to show. The writing on there states that the horseman in

1690 the picture is standing at the white flag which is at the center line of Los Alisos road as surveyed by the county surveyor of Los Angeles county. That is the north end of the proposed road.

(Whereupon the photograph referred to was admitted in evidence and marked Defendants' Exhibt 7, and is one of the exhibits to be certified to by the clerk.)

1691 This document which I produce is a 3¼ by 4¼ kodak picture of a portion of the Los Alisos road, that particular portion that is viewed by the court and jury while standing at that certain obtuse angle in the fence, at the corner of the alfalfa field at the point where the beach road, so-called, crosses the main road, looking north up Los Alisos Canyon. The rocks which are about a quarter of an inch or half an inch to the left of the horseman in the picture are 1692 the rocks which were looked at by the court and jury at that time, and the horseman in the picture is at one of the flag stakes in the center line of the county survey.

Mr. Anderson: We offer this also as Defendants' Exhibit No. 8.

The Court: It may be admitted.

(This is another of the exhibits to be certified to by the clerk.)

By Mr. Anderson:

(Continuing.) This (main) road, where it passes up through the mountains and across those canyons takes in a considerable amount of foliage. Wherever it goes into the canyons and across the canyons, like Malibu, Zuma, Trancas, and those intervening, there are some magnificent trees, both oak, sycamore and other varieties within the right of way, and the slopes for the cuts and fills. The relative distance or approximate distance from the point where the road runs through the various cultivated land to the point where cultivation ceases, from Ventura county line to the Trancas Canyon would vary from 25 feet to 200 feet. The road could be taken out of the cultivated land by moving it northward for a distance, where some of our present roads are at the present time and others on which construction has been started. From Trancas Canyon over to Zuma Canyon—rather, to Hog Flats, there is an area where there is 100 or 200 feet, which would be on the southerly side of the road and then from Hog Flats there would be several hundred feet on the southerly side and a mile on the north. It runs practically through the field there, and from Zuma to Ramirez it would be about in the center of the cultivated land, about one-third north and one-third south, half a mile north and three-quarters of a mile south. From Ramirez over

1696 to where the roadway goes across the ridge on the westerly end is through the fields, and on the easterly end and the northeasterly end it runs up to the edge of the barley fields and runs across the fields diagonally. There the road would have to be removed north of it to escape the cultivated land, in some places several hundred feet. After it comes out of the mountains at Sosto, to escape the cultivated land, and from
1697 there on to Marie, it will have to be raised. It will have to be moved in a northerly direction from several hundred feet to a quarter of a mile; that would take it to Winter Canyon, and from Winter Canyon to the Malibu flat, a hundred feet to the south or a third of a mile to the north. From Malibu on to Las Flores there is no cultivated land at present. The present road as compared with the proposed right of way from Las Flores to Sweetwater Canyon is en-
1698 tirely within the old right of way, practically so. That distance is about two miles or two and a quarter.

Recross-Examination

By Mr. Burnell:

Upon the Malibu Ranch there is a private road from its eastern end to its western end; that is the road that the court and jury traveled over last week. That present private road extends in a number of places through the cultivated bean land. This past year we have put

1699 the roadway north of the cultivated areas in some sections and have cleared the brush for putting the other portion of the road above the cultivated areas, with the idea of getting the roads outside of the cultivated areas. The proposed road travels through more of the bean land than the present road. I don't know the distance. I know it goes down through the bean fields at places where our roads at the present
1700 time do not go, but just how much I couldn't say without measuring up. The present road from Latigo to Solstice leaves the coast and does not go as near the coast as does the private road, and crosses over a saddle and goes up amongst the hills; at a point directly opposite the hills, the land through which the present road goes is steep, precipitous sides of a rocky bluff most of the way. Then after you pass that rocky bluff, you wind up that S grade that perhaps
1701 you remember, up to the top of the mesa land, which is some distance west of Latigo Canyon. The mesa land at the point which I just gave in my description is now under cultivation. The proposed road about opposite that point, that is, between the point and the northern boundary of the road, goes through property that is not cultivated. The proposed right of way passes through more cultivated land than is saved by the stretches of the proposed right of way that leave the present cultivated land or leave the

1702 present roadway and to the mountain district I can not tell the amount of cultivated land that is taken up by the proposed road in excess, if any, of the cultivated land which is taken up by the present traveled road. I would say, approximately, two or three times as much. I made some suggestion that the proposed road in certain places could be moved further to the north to avoid traversing cultivated land. The effect the making of such
1703 changes would have on the grade of the road would be, I think, that in some places it would lower the grade, and I think in some places it might raise it a little bit. A point I think it could be put in on the location where I pointed out at a saving over the proposed road is particularly on the westerly end, I think, by crossing the canyon higher up there would be shorter bridges. There would be a little more cutting
1704 and filling. I do not know offhand the cost of cutting and filling as compared with the cost of bridge construction. I think the moving of the road further up those canyons would not materially result in increased maintenance cost, due to the danger of flood waters washing out the road. The biggest washes would be at the mouths of the canyons.

Q. Have you made any study of those subjects? A. I have seen the results of many of them on the Malibu Ranch and between there

1705 and Santa Monica and have studied them somewhat on account of the fact that I have had to do with the repairing of them. They could put the road further up the hill and maintain practically the same grade and have less cost of maintenance as to some of them. I don't know offhand what changes I have said might be necessary to this $25,000 pipe line. It would have to be studied out. I don't know. I do know some changes would be necessary. I don't
1706 know to what extent. I don't know what the cost would be. The road in the vicinity or through Zuma Canyon passes over a ten-inch water pipe line. I don't know whether the detail of the county's construction calls for moving that pipe or not. I don't know whether it would be necessary to move it or not. I have told you that at one point the road crossed a spur track, or railway. I refer to the Hueneme
1707 and Port Los Angeles railway. Construction of that was started in 1907; 15 miles were completed in the next three years, so that the road has been completed as a road for 15 miles since 1910. A number of passenger trains have run over it each day. It is a question of holding the franchise. More than one train ran over the road daily for a considerable length of time, up to when we had some very heavy washouts there, two or three years ago. Up to two or three years ago passenger trains ran over the

1708 road, at times from one end of the line to the other; at other times over different stretches in between. There were stations along the line, one particular one on Zuma mesa. I think at that time the terminus was west of Nicolas or west of Lechusa. The other end was at Carbon canyon. The passengers of the railroad got to Carbon canyon by permissive use of the road through Malibu canyon. That is the first can-
1709 yon west of Las Flores. Coal Canyon it is on the map. Our passengers had to travel over a portion of the Ringe property to get on to the railroad. The motive power was gasoline. These passengers went to various points along the line. That still left them on the Rindge Ranch. That is all the further that the railroad went. I do not know what happened to them after they got off the train onto the soil of the Rindge Ranch. I think the date that the
1710 last passenger train went over the railroad was some time in 1914.

Q. Was that a regular passenger traffic maintained for the general public? A. All that the public demanded.

Q. How many trains a day did they run over that road, or do they run any? A. Sometimes one, sometimes more. I rather think that one went about every day; there might have been some skips that I don't recall. We never ran any regular steam engines over that road.

1711 They ran freight trains. They got the freight from the Malibu Ranch, and the tenants of the Malibu Ranch. That was not purely a private matter between the Rindge people and those that lived on the ranch in getting freight for the ranch. The nature of that freight traffic was for the public that requested it.

Q. The public could not get to the road without the permission of the Rindge Company, could they? A. There were a number of peo-
1712 ple that were on the ranch.

Q. Answer the question. A. Yes, sir.

Q. How could they get there without permission? A. They had permission.

Q. Unless they had it they could not ship their goods on the road? A. Not on that portion that had been completed at that time. There was no time when the general public, either traveled as passengers or shipped their freight
1713 over that road, or any portion of it, without going onto the private property of Mrs. Rindge and the Rindge Company, or with the permission of Mrs. Rindge or the Rindge Company.

Q. Then, so that we will understand you, there never was a time when the general public could either travel as passengers or ship their freight over this railroad line without going onto the private property of the Rindge Company or the Rindges, and without the permission of the Rindge Company? A. Well, I

1714 don't know. I think they could have traversed the property of the railroad company without the permission of the Rindge Co. The railroad property is not on the ranch property. The railroad company property does not commence at Carbon Canyon. It goes to the eastern boundary of the Malibu Ranch. The railroad itself, though, the tracks and roadbed, started at Carbon canyon; so the public would have had to find the location of the right of way and travel
1715 on the right of way to get there themselves, or to get their goods to the train. There was a road laid right near that right of way. It was on it. They could have traveled over that road to the railroad without going on the private property of the Rindges. It is a fact that they could not have traveled on the right of way way of the railroad. There were points that passengers on that road could have shipped their goods
1716 to or traveled to after they once got on to the railroad at Coal Canyon, other than the property of the Rindge Company or Mrs. Rindge. A number of points along the line people have been given permission to traverse the ranch. They have shipped at those points and taken goods where they wanted to. They could not have taken themselves off that train or goods off that train without permission of the Rindge Co., if they left the right of way of the railroad company. The general public, an ordinary citi-

1717 zen who wanted to ride on that train, and didn't have the permission of the Rindge Company, would walk or drive up to Coal Canyon on the right of way of the railroad. He would take his train there and when he got to any point where he wanted to get off he could not legally step foot on the property without the permission of the Rindge Company.

Tuesday, October 12, 1918.

1718 10 o'clock A. M.

F. B. SCOTTON

resumed the stand for further

Cross-Examination

By Mr. Burnell:

Q. I understand that there are two railroad companies in connection with this case, the Hueneme & Port Los Angeles Railroad and the Hueneme, Port Los Angeles and Southern.

1719 Which of the companies was it that built the road we were talking about yesterday?

Mr. Anderson: Objected to as immaterial and not cross-examination.

The Court: Objection overuled.

(Exception No. 10.)

A. The Hueneme, Malibu & Port Los Angeles.

(Continuing.) That is the older of the two. The motive power to move the cars was applied by a gasoline engine, constructed upon a car and

had wheels under it, and enough power was developed to haul materials of a total weight of five or ten tons at a time. That was not a gasoline engine taken from an automobile—although I think we did have one engine equipped with a strong, powerful gasoline automobile engine, and another one with an upright engine. We had several. It is absolutely not a fact that whatever vehicles were drawn along the tracks of that railroad were drawn by horses and mules; at times they were; sometimes were used gasoline power and sometimes horse and mule power. That applied to almost all of the period of time. We did not use the horses and mules for motive power more frequently than the gasoline engine. We used the gasoline more frequently. We actually operated trains on that road from the time it was constructed until about 1914. I don't remember the exact month, but we had some heavy rains; it may have been in the early part of 1914, at the time of the heavy rains in January and February. Since that time there have not been any trains run over that road entirely; over portions of it; over the eastern portion of it; not very far; I guess from the warehouse westerly, perhaps one or two miles. I don't remember what motive power was used, either gasoline, horses or mules. There may have been passenger trains over the road at that time; I do not know. I had not

1723 been visiting the ranch very frequently at that time. Trains were not operated over this road from the eastern end very long, I think, because we had other washouts soon afterwards, perhaps a few weeks. At the present time there are portions of the roadbed and tracks of this railroad actually covered by soil and sand, and there are also other portions where trestles are broken down, and also other portions where the ties are
1724 entirely gone and the rails without any ties or support hanging across gullies and ditches; we had some very bad washouts. I think there are not other portions of the road where the rails are spiked on to the ties by one spike for each tie. I know that is not true of all the road. I gave you yesterday distances from various points, for instance, from the Yerba Buena settlement to Heneme and to Oxnard, and told you the distance from Heneme to Yerba Buena
1725 was 14 miles. That is measured in an air line. A road from Yerba Buena settlement to Hueneme would not deviate very far from an air line, directly. (Witness draws on map, Exhibit 6.) That line just drawn from the center of the Yerba Buena district to Hueneme indicates the air line distance about 14 miles. The red dotted line starting from about the center of the Yerba Buena settlement and joining with the line around about the word "Guadalasca," and then continuing on to Hueneme in an air line,

1726 indicates a route that is not much longer than an air line. I think the mountainous country ends at a point above the letter "L" in "Guadalasca." About here is where it ends. (Indicating on map.) It is comparatively open country. The air line would be mountainous in any direction. From the point where my road passes under the letter "G" in "Guadalasca" to the eastern terminus of that road at Yerba Buena
1727 settlement, the air line distance would be about 6½ miles. I never saw a road passing through mountainous or hilly country that ran absolutely straight for a distance of six miles, and I have seen many roads in flat country that are not straight. My distances to Oxnard were also air line; Santa Paula 18 miles was air line; all of the distances were air line distances. I don't mean to tell you that the distance from Yerba Buena settlement to Heneme, Oxnard or Santa
1728 Paula by road would be the distances I have indicated; it would be more. Any road in any mountain would be longer than the air line distance. That applies to all of those distances; to the store at Mathieson ranch and the other distances which I have given.

Q. If you were laying out a road from Yerba Buena to Santa Monica, part of it would pass over the Rindge Ranch and a considerable part of it through the Pacific Ocean?

1729 Mr. Anderson: We object to that on the ground that he never claimed that he was laying out a road. He was simply giving the air line distances between the points, and has pointed out that necessarily a road would be longer.

The Court: Objection overruled.

(Exception No. 11.)

A. No, sir.

Q. (By Mr. Burnell): Your line just drawn on the board from Yerba Buena to Santa Mon-
1730 ica does not indicate your idea of how a road should be laid out between those two points then? A. I was asked the air line distances between various points.

Q. Answer the question yes or no; it does or it does not. A. And I have drawn a line to indicate the air line distance.

Q. Now, will you answer the question? (Question read.) A. No, sir.

1731 Commencing with the eastern end of the proposed road at Las Flores Canyon, at the present time there is a bridge at the entrance to the Rindge property at Las Flores Canyon, and a gate across that bridge. The proposed right of way from that bridge to Coal Canyon does not run through sandy soil all the way to Coal Canyon. I would call it a loam and on the southern portion of the right of way a loamy sand. It is not just the same kind of sand as on the beach. The right of way of this railroad runs right

1732 through a rocky hill or promontory on the east side of Coal Canyon. The right of way of the railroad company, referring to the railroad which I told you about this morning, comes down to Coal Canyon as it runs east. There is a rocky promontory coming down from Coal Canyon towards the beach; the right of way passes through that rocky promontory. There has been no construction through that promon-
1733 tory. I would like to complete or make more correct my last answer. You asked whether or not the right of way went through that promontory; it includes the entire promontory from the mean high tide line back to the north line of the right of way, the width of the right of way and the open country to the south. The continuation of that portion of the right of way in which the tracks have been laid, runs through the promontory. It is not true that between Coal Can-
1734 yon and Malibu Canyon the right of way of the proposed road runs through sandy soil, the same sand you find on the beach. It runs through loamy, sandy soil, the kind of soil that is there at that particular point on the Malibu Ranch. Part of it is soil that is suitable for cultivation, in my opinion, and part not. In wet weather, none of the land that the road runs through between Coal and Malibu Canyon is boggy land. It does not run across the bed of the Malibu Creek, not between Coal and Malibu Canyon.

1735 Between Coal Canyon and Malibu Canyon there is a wharf, going out into the ocean. Just east of the wharf or warehouse the right of way goes through certain improvements, spur tracks and tracks of the railroad to the warehouse, the tracks on which this passenger, freight and all necessary traffic passes. I have not studied the right of way quite close enough to know whether it takes part of the warehouse or not. From
1736 Winter Canyon west the road winds around the base of the hills for a distance of about a third of a mile—a third to a half mile. If the actual distance on the county map shows 1,000 to 1,200 feet that would cover. A third of a mile would be about 2600 feet, then it begins climbing across the mesa. The land over which it climbs up to this mesa is rough pasture land, sloped from the mesa land down to the beach. I think it is not steep hillside. It is hillside, but it is not
1737 cliff, or bluff. It isn't a fact that after it gets to the mesa on the east side of Marie Canyon, that it runs for about a couple of thousand feet over a very badly washed stony pasture land covered with rocks and stones. I think it does not go over that kind of land. It traverses the east side of Marie Canyon, which would be a steep slope of the canyon. The character of the soil there is like almost all the steep canyons here, rocky and small rocks and soil and brush. It has never been cultivated, not on those steep

1738 sides. Leaving Marie Canyon, we have gone over this hillside and then we come to a rolling mesa. Then we go into a bean patch, the one just west of Marie Canyon, and runs from Marie to Puerco. I think it is about 20 acres. It is wider from the ocean back than it is from east to west. Straight from east to west it is about seven or eight hundred feet. I think that it is more than three or four hundred feet wide. I never meas-
1739 ured it, but I have walked across it, and my memory of it is it is more than three or four hundred feet. There was a fence around that bean patch that we have been talking about, and I believe there is now, to keep the stock out. I don't know whether that is an iron fence with iron posts with five barbed wires, or whether it is a four by five, seven foot redwood posts, with five wires. I am quite sure, though, it is not a woven wire fence. It isn't a four wire fence,
1740 four strands of barbed wire on iron or steel posts. I heard Mr. Otis' testimony. I think I know the kind of fence he described. At the eastern end of the ranch we have, I think, 52 in., close mesh woven wire, with several barbed wires above the woven wire, and it runs from the southeastern corner of the ranch in a northerly direction, I don't know just how far, but I do know we bought about a mile of wire to start our line fencing with that class of fencing; and then in the Malibu canyon, and I think in

1741 Zuma canyon, we have quite a little woven wire fence, some that is about 26 or 32 inches high, and other woven wire fence that is around about 48 by 52 inches high; and if they enclose horse pastures, or along where the horses are, some of them have the common wire, that is, without barbs, and others have barbed wire both under the woven wire and above it. There are various kinds and types of fences which we have found suitable for various parts of the
1742 ranch; this fence on the eastern end of the ranch, that is, the line fence of the Malibu Ranch property—that fence extends from the Pacific Ocean at mean high tide, along the eastern boundary of the ranch, up Las Flores Canyon, and I think it goes farther than 200 feet, but I don't know how far. Whether it goes as much as half a mile I couldn't state positively, but it goes up at Las Flores canyon. That fence
1743 does not run to below the level of mean high tide.

Q. Then is the beach at low tide uncovered so that you can walk along the beach from east of the Rindge line to west of the Rindge line? A. At mean high tide it happens to be on the southerly side of the fence.

Q. It would have to be a pretty low tide? A. I think all mean high tides would have to be low to have one traverse the beach below mean high tide line.

1744 Going up Las Flores Canyon the fence ceases at some points. I think the Rindge property is fenced on the eastern boundary line and also on the northern. I know that we have always had a line fence in that neighborhood excepting when they have been burned out and I also know that not long ago we only discontinued the work of repair and reconstructing of the line fence in that particular part of the country on account of
1745 our surveyors being shot at. I did not see any of them being shot at; all I know is what somebody told me. Along the eastern or northeastern boundary in Las Flores Canyon, I know there is a fence there for some hundred feet or two; beyond that I am not now conversant. I don't know beyond that 200 feet at the present time. After you have passed the mouth of Marie Canyon, you come to a bean patch, west of Marie. That bean patch is fenced; I think it
1746 is a three or four wire fence of barbed wire on wooden posts.

Redirect-Examination

By Mr. Anderson:

Q. Coming back to the question of this railway, do you know how much money has been expended by that railway in connection with its business since it was organized?

Mr. Burnell: Objected to as incompetent, irrelevant and immaterial.

1747 The Court: I don't see the materiality of that.

Mr. Anderson: They are undertaking to show that it is not a railroad and we expect to show that the company has actively been engaged, and has expended large sums of money in its construction and maintenance. I think that the question of the kind of gas engines used, if that was material, this would be.

1748 Mr. Burnell: I want to be perfectly frank with Your Honor. One of the purposes of that examination was to show just what this railroad company had done in the way of operation. Under section 468 of the Civil Code they may have spent a million dollars, but if they ceased to keep it in operation for six months, they lost their franchise and automatically forfeited the right of way.

The Court: In view of the inspection made
1749 by the jury and the court, of this right of way, I think that all of these questions are material —of course, if you want to make the record you may do so, but the inspection, for the purposes of observation, throws considerably more light on the matter than the record does.

Mr. Anderson: I wish to make the record to some extent.

The Court: All right. Objection overruled.

A. Yes, sir.

Q. By Mr. Anderson: How much? A. I

know of assessments in excess of $285,000 having being levied, and paid into the company by the stockholders and all of that was used in the construction of that railroad. I am secretary of the railroad company and thoroughly familiar with all of the operations and expenditures. I am secretary of this Heneme, Malibu & Port Los Angeles Railroad. Those repairs of washouts have not been made because we have had difficulty in financing them.

Here the articles of incorporation of the Hueneme, Port Los Angeles & Southern Railway were put in evidence, and were in words and figures as follows:

"ARTICLES OF INCORPORATION
of the
HUENEME, MALIBU & PORT LOS ANGELES
RAILWAY:

Know all men by these presents: That we, the undersigned, a majority of whom are citizens and residents of the state of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the state of California.

And we hereby certify:

I.

That the name of said corporation shall be the Hueneme, Malibu & Port Los Angeles Railway.

II.

That the purposes for which said corporation is formed are as follows, namely:

To build, construct, buy, lease, sell, operate, hold and have, an electric railroad with necessary turn-outs, side tracks and switches to run from Port Los Angeles, in the county of Los Angeles, state of California, along the shore of the Pacific ocean northerly to Hueneme in the county of Ventura, in said state of California.

The said railway to run from the exterior limits of the said Port Los Angeles, in said county of Los Angeles, along the shore of the Pacific Ocean and along or on the exterior boundary of the said Malibu ranch and other property to Hueneme in said county of Ventura.

The kind of railway to be operated, is one operated by electricity, steam or horses or mules, or by any other motive power that may hereafter be deemed advisable. The estimated length of the said road is fifty-five (55) miles.

III.

That the place where the principal business of said corporation is to be transacted is in the city of Los Angeles, county of Los Angeles, state of California.

IV.

That the term for which said corporation is to exist is fifty (50) years from and after the date of its incorporation.

1756

V.

That the number of directors or trustees of said corporation shall be five (5), and that the names and residences of the directors or trustees who are appointed for the first year and to serve until the election and qualification of such officers are as follows:

Names.	Whose residence is at:
M. H. Sherman,	Los Angeles, California.
1757 Frederick H. Rindge,	" " "
W. J. Williams,	Pasadena, California.
May K. Rindge,	Los Angeles, California.
George I. Cochran,	" " "

VI.

That the amount of the capital stock of said corporation is seven hundred and fifty thousand dollars ($750,000.00), and the number of shares into which it is divided is seventy-five hundred (7,500), shares of the par value of one hundred
1758 dollars ($100) each.

VII.

That the amount of said capital stock which has been actually subscribed is seven hundred and fifty (750) shares and the following are the names of the persons by whom the same has been subscribed, to-wit:

Names of subscribers.	Nos. of shares.	Amount.
Frederick H. Rindge,	596	$59,600
George I. Cochran,	10	$ 1,000
W. J. Williams,	10	$ 1,000

1759 M. H. Sherman,	10	$ 1,000
May K. Rindge,	124	$12,400
Total No. of shares,	750	Total $75,000

That the subscribers hereto do hereby elect George I. Cochran the treasurer of said intended corporation.

That at least 10 per cent of the capital stock of said corporation has been paid to said George I. Cochran, treasurer of the said intended cor-
1760 poration for the benefit of the said corporation, namely, the sum of seventy-five hundred dollars ($7,500.00).

In Witness Whereof, we have hereunto set our hands and seals this 24th day of September, A. D. 1903.

M. H. SHERMAN, (Seal)
FREDERICK H. RINDGE, (Seal)
MAY K. RINDGE, (Seal)
1761 W. J. WILLIAMS, (Seal)
GEORGE I. COCHRAN, (Seal)

(Duly verified and acknowledged.)

Mr. Anderson: There is attached to that a certified copy of the articles of incorporation, certified to be a copy filed with C. F. Curry, secretary of state, which certification is dated the 13th day of October, 1903, and the endorsement shown, that it was filed in the office of the secretary of state on the 13th day of October, 1903. I think that is sufficient. The file number is

4992. Now, I wish to offer a deed which bears the recording stamp of the county recorder of Los Angeles county.

Mr. Burnell: We have examined that.

Mr. Anderson: I wish to introduce it with the same understanding as the other, to be copied into the record.

Mr. Burnell: Yes.

Whereupon the document referred to was admitted in evidence, and was and is in words and figures as follows, to-wit:

This Indenture, made this 6th day of October, in the year of our Lord one thousand nine hundred and three between Frederick H. Rindge and May K. Rindge, husband and wife, both of the city of Los Angeles, in the county of Los Angeles, state of California, parties of the first part hereto, and the Huneme, Malibu & Port Los Angeles Railway, a corporation organized and existing under the laws of the state of California, and having its principal place of business in the said city of Los Angeles, the party of the second part hereto;

Witnesseth: That the said parties of the first part for and in consideration of the sum of Ten Dollars ($10.00) (and other good considerations) gold coin of the United States to them in hand paid, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey to the said party of the second

part, its successors and assigns forever, the perpetual right of way for the construction and maintenance of a railway over and along the following described property, situated partly in the county of Los Angeles, state of California, and partly in the county of Ventura, state of California, and particularly described as follows, to-wit:

A strip of land two hundred feet wide along the westerly side of the Malibu Ranch immediately adjoining the mean high tide line of the Pacific Ocean; said strip of land being the most westerly 200 feet of said Malibu Ranch as per patent of said rancho recorded in the office of the county recorder of said county of Los Angeles in book 1 of patents, page 414, et seq.

Also a strip of land two hundred feet in width along the westerly side of all the property of said F. H. Rindge lying north of said Malibu Ranch adjoining the mean high tide line of said Pacific Ocean.

The said right of way is granted for the purpose only of constructing, operating and maintaining a railway to be operated by electricity, steam or horses or mules, or by any other motive power which the said grantee may deem advisable.

To have and to hold the same to the said party of the second part or its successors and assigns forever for the purposes aforesaid.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

FREDERICK H. RINDGE, (Seal).

MAY K. RINDGE, (Seal).

(Duly acknowledged.)

The document bears the following endorsements):

Recorded at the request of grantee October 8th at 5 p. m. in book 1898, page 146 of deeds, Los Angeles county records. Calvin Hartwell, county recorder, by R. L. Hazen, deputy. Fees $1.20.

Dated 6th October, 1903. Frederick H. Rindge and May K. Rindge to Heuneme, Malibu & Port Los Angeles Railway. Deed of right of way.

Mr. Anderson: Now, if Your Honor please, I desire to offer in evidence another document under the same stipulation to be copied into the record.

Whereupon the document referred to was admitted in evidence and was and is in words and figures as follows, to-wit:

This indenture, made the 16th day of March, in the year of our Lord one thousand nine hundred and six (1906) between Robert F. Jones, of the city of Santa Monica, in the county of Los Angeles, state of California, party of the

1771 first part, and the Hueneme, Malibu & Port Los Angeles Railway, a corporation, duly organized under the laws of the state of California with its principal place of business in the city of Los Angeles, county of Los Angeles and state aforesaid, the party of the second part witnesseth.

That the said party of the first part for and in consideration of the sum of ten dollars, lawful money of the United States of America, to him
1772 in hand paid by said party of the second part. receipt whereof is hereby acknowledged, does by these presents, grant, bargain and sell, convey and confirm, unto the said party of the second part and to its successors and assigns forever, a right of way for railroad purposes on, under, above and over that portion of the rancho Boca de Santa Monica, in the county of Los Angeles aforesaid and being a part of allotment No. 2, which was allotted to Manuel Mar-
1773 quez in and by the final judgment and decree of partition by the District Court of the 17th judicial district of the state of California in that certain action numbered 2405 on the files of said court wherein Ramona M. De Baker et al were plaintiffs and Manuel Marquez et al were defendants, which is more particularly described as all that part or portion of said allotment number 2 which lies between the line of ordinary high tide of the Pacific ocean and the line parallel to and two hundred (200) feet distant north-

erly from said line of ordinary high tide. Together with the right, liberty and privilege of constructing, erecting and maintaining on, under, above and over the above described strip of land the railroad of the party of the second part together with its roadbed and buildings, rails, poles and wires, and all sundry other such equipment, electrical or otherwise as may now, or hereafter be or become necessary, convenient or useful in and about the construction, improvement, maintenance, operation, repair, addition to and extension of said railroad, its incidents and appurtenances.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written. Signed, sealed and delivered in the presence of Wm. J. Hunsacker.

ROBERT F. JONES (Seal).

(Duly acknowledged.)

(The document above referred to bears the following endorsement):

Deed for right of way. Robert F. Jones to Hueneme, Malibu and Port Los Angeles Railway. Recorded at request of grantee April 7, 1906, at 29 minutes past 11 A. M. in book 2637, page 170 of deeds, Los Angeles county records. Calvin Hartwell, county recorder, by S. D. Weil, deputy. Fees, $1.30.

1777 (Witness, continuing): I was asked about a boggy condition at the point where the proposed right of way crosses the Malibu creek. I am familiar with the conditions there in the winter time, during the stormy season. That road at that point is not passable by automobiles during the storm season. According to my best recollection and my observation, it is impassable from storms and the boggy condition throughout the entire rainy season and away into spring.

1778 *Recross-Examination*

By Mr. Burnell:

Q. Mr. Scotton, calling your attention to this deed last introduced in evidence, I will ask you if the company has any deeds or other conveyances conveying to it any rights of way in between the termination of the right of way granted by the Rindges, as set forth in the first deed you have introduced and the right of way

1779 described in the deeds that were just introduced?

A. Yes sir. Deeds for right of way over the Joe Call property.

Q. Now, will you point out on the map (Exhibit 6) so we will know where these rights of way are, Mr. Scotton, the right of way granted by the deed from Jones.

The Court: Delineate it in colored pencil.

Mr. Burnell: Yes, make it blue, if you will.

(Witness marks on map.)

1780 A. This would be approximate. I can put it in the neighborhood of the place. I will mark that number 1. (Witness marks on map.) I think Mr. Call is in here (indicating on map.)

Q. Mark where it is according to your best information. (Witness marks on map.) That is the Call property. That is not the little house to your left as you go from the Rindge property towards Santa Monica, up on the bluff. The
1781 first one as you go past is Jack Henry, and then about a mile east there, Joe Call has a place. Jack Henry has a good house on the left just as you come out of the Malibu Ranch on the east side of Las Flores. There are no other rights of way of the railroad company besides those I have described and introduced in evidence, at the present time. It is true that there is a break or hiatus between the right of way granted by Mr. Jones and the right of way
1782 granted by Mr. Call, and the same applies between the right of way granted by Mr. Call and the right of way granted by Frederick Rindge. Traveling along this railroad up to its westerly terminus, the termination of the road is about a mile and a half west of the Ventura county line. The company has no rights of way at the present time extending farther west or in any other direction beyond the property belonging to Mrs. Rindge and the Rindge interests, indicated as just below Yerba Buena canyon and

1783 west of the Ventura county line. (On Exhibit 6). The only continuous right of way that the company has, or ever has had, is entirely situated within the boundaries of the Malibu Ranch and of the property in Ventura county owned by the Rindges; the description in the deed of the right of way from the original grantor, Mr. Frederick Rindge, was for a two hundred foot strip immediately adjoining the Pacific ocean at
1784 mean high tide. The tracks of the railroad that were actually laid on the ground, the tracks and rails, do not at all points lie within the two hundred foot right of way.

Q. For instance, if we take Point Dume, as shown on the map, Defendant's Exhibit 6, how far from the ocean side or southerly extremity of Point Dume are the tracks of the present railroad on the ground? A. My memory is that the practical location, as worked out at that
1785 point, was about a thousand feet back from the point itself.

Q. Now, I call your attention to the point as shown on the map as lying east from Point Dume. It is really the second point lying east of Point Dume and is just to the west, according to the map, from the line that runs up and down from the north and south and passes the "O" in the word "Santa Monica" and is a little bit below and to the west of the letter "D" in "Dry Canyon." Whereabouts is the railroad

1786 that was put upon the ground in relation to this point? A. I think it is within the 200 foot right of way at that point. I think there are other points along the line of the road that is built upon the ground where it departs from the right of way described in the deed from Mr. Rindge, that is, the 200 foot right of way; I think, at the mouth of Malibu Canyon. It is a fact, I think, that at some places the road that has actually been built lies outside of and not
1787 within the right of way granted to the Huneme, Malibu & Port Los Angeles Railroad Company by Frederick Rindge.

These assessments were levied in 1907, I think, 1908 and 1909, and I think that some after 1909. The heavy ones were levied in 1907, 1908 and 1909, and there were lighter ones levied after that, and also advances made after that time. I think that assessments were
1788 levied after 1909. These advances were made by the Rindge Company and May K. Rindge. I know the reason for the Rindge Company and May K. Rindge making advances to this separate entity, the railroad corporation.

Q. What was the reason?

Mr. Anderson: We object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

(Exception No. 11.)

1789 A. The railroad company had difficulty in financing its business, and these advances were made by the Rindge Company and May K. Rindge. The Rindge Company lent or advanced money to the railroad, because the right of way of the railroad was through a portion of their property, and they were more or less interested in its welfare.

Mr. Burnell: We want to offer, if the court please, the articles of incorporation of the Hueneme, Malibu & Southern Railway, on file in the office of the county clerk. We will submit the document to Your Honor so you may see it.

1790

The articles of incorporation of the Hueneme, Malibu & Southern Railway were then admitted, and are as follows:

"ARTICLES OF INCORPORATION

of

HUENEME, MALIBU AND SOUTHERN RAILWAY.

1791

Know all men by these presents: That we, the undersigned, a majority of whom are citizens and residents of the state of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the state of California.

And we hereby certify:

I.

That the name of said corporation shall be Hueneme, Malibu and Southern Railway.

1792 II.

That the purposes for which said corporation is formed are as follows, namely:

To build, construct, buy, acquire, lease, sell, operate, hold and have a railroad with necessary turnouts, sidetracks and switches to run from Port Los Angeles, in the county of Los Angeles, state of California, along the shore of the Pacific ocean northerly to Hueneme in the
1793 county of Ventura, in said state of California.

The said railroad to run from the exterior limits of the said Port Los Angeles, in said county of Los Angeles, along the shore of the Pacific ocean and along or on the exterior boundary of said Malibu Ranch and other property to Hueneme in said county of Ventura.

The kind of railroad to be operated is one operated by electricity, steam, or horses or mules, or by any other motive power that may
1794 hereafter be deemed advisable. The estimated length of the said road is fifty-five (55) miles.

III.

That the place where the principal business of said corporation is to be transacted is in the city of Los Angeles, county of Los Angeles, state of California.

IV.

That the term for which said corporation is to exist is fifty (50) years from and after the date of its incorporation.

1795 V.

That the number of directors or trustees of said corporation shall be four (4), and that the names and residences of the directors or trustees, who are appointed for the first year and to serve until the election and qualification of such officers are as follows:

Names. Whose residence is at:

M. K. Rindge, Los Angeles, California.

1796 R. R. Adamson, Los Angeles, California.

Frederick H. Rindge, Los Angeles, California.

F. B. Scotton, Los Angeles, California.

VI.

That the amount of the capital stock of said corporation is seven hundred and fifty thousand ($740,000.00), and the number of shares, into which it is divided is seventy-five hundred (7,500) shares of the par value of one hundred dollars ($100.00) each.

1797 VII.

That the amount of said capital stock which has been actually subscribed is five hundred and sixty (560) shares and the following are the names of the persons by whom the same has been subscribed, to-wit:

Names of subscribers.	No. of shares.	Amount
M. K. Rindge	186	$18,600.00
R. R. Adamson,	186	18,600.00

1798	Frederick H. Rindge,	186	18,600.00
	F. B. Scotton,	2	200.00
		560	$56,000.00

That the subscribers hereto do hereby elect M. K. Rindge the treasurer of said intended corporation.

That at least ten per cent (10%) of the subscribed capital stock of said corporation has been paid to said M. K. Rindge, treasurer of
1799 the said intended corporation, for the benefit of said corporation, namely, the sum of fifty-six hundred dollars ($5,600.00).

In Witness Whereof, we have hereunto set our hands and seals this 25th day of January, A. D. 1916.

M. K. RINDGE,
R. R. ADAMSON,
FREDERICK H. RINDGE,
F. B. SCOTTON.

1800 (Duly acknowledged.).

That was filed January 26th, 1916, H. J. Lelande, clerk, by C. C. Crippen, deputy. The number of the articles of incorporation is 18,-923.

Mr. Burnell: Now, if the court please, in that connection we desire to offer a deed from May K. Rindge and the Rindge Company, a corporation, to Hueneme, Malibu & Southern Railway Corporation.

1801 The document last offered as received in evidence was as follows:

"U. S. I. R. stamp $100.00. Cancelled.

"This indenture, made this second day of February, in the year of our Lord one thousand nine hundred and sixteen, between May K. Rindge, and Rindge Company, a corporation, first parties, hereto, and Hueneme, Malibu and Southern Railway, a corporation, second party hereto:

1802 Witnesseth: That the first parties hereto for and in consideration of the sum of ten dollars (and other good and valuable considerations) to them in hand paid, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the second party, its successors and assigns forever, a right of way for railroad purposes only through, over, along, upon and covering that certain strip or parcel of land situate partly in the county of Los

1803 Angeles and partly in the county of Ventura, state of California, being a portion of the Malibu Ranch and certain neighboring tracts, and described as follows, to-wit:

A strip of land sixty (60) feet in width extending from the eastern boundary of said Malibu Rancho at or near Las Flores Canyon westerly to Yerba Buena Çanyon in said Ventura county, and located equally on either side of center line hereinafter particularly described, ex-

1804 cepting that over and along all distances or spaces where said center line is located within thirty-five (35) feet of the line of mean high tide of the Pacific ocean, the southerly boundary of said right of way shall be a line following the meanderings of said mean high tide along and through each such space and located five (5) feet above or landward from said line of mean high tide.

1805 The center line above mentioned is particularly described as follows:"

Mr. Burnell: Then, if Your Honor please, comes several pages of a long surveyor's description by course and angles and monuments which I take it would be utterly useless to read into the record, because it would take a surveyor to interpret it.

Mr. Anderson: As a matter of fact, you and Mr. Vallee are thoroughly familiar with the various papers and documents in this case. Isn't it 1806 that right of way as described in that deed actually delineated, to the best of your information, on the map Exhibit "A" annexed to the complaint?

Mr. Burnell: I think so, but I am not positive. Mr. Comly can tell when he comes on the stand.

Mr. Anderson: We waive the reading of the description. I think it would be unintelligible to any of us, but my impression is that in large

part at least, at least in so far as pertinent to anything in this case, that description has been impressed upon that map by the surveyor.

Mr. Burnell: That is my impression. I don't want to stipulate to it until I know, but it is my impression, and I think we will find that it is correct. After the description, the deed proceeds as follows:

"Subject to all rights and interest of the Hueneme, Malibu & Port Los Angeles Railway, a corporation, in or to the right of way hereinbefore described, or any part thereof, or any improvements constructed or located thereon.

Together with the right to extend the slopes or cuttings or embankments as far as necessary, but not to provide for or accommodate slopes flatter than at a grade of one and one-half (1½) to one (1) and to build and maintain within said right of way and beyond the limits thereof all necessary culverts and other work for the control and disposal of storm water and natural streams of water flowing in and upon or across said strip of land; also the right to use the material taken from said right of way for the construction and maintenance of said railway; provided, however, that said right of way shall forever be deemed or treated as extending for any purpose or to any extent within five (5) feet of any part of said line of mean high tide. The first parties hereby reserve the right to crossings over

the right of way hereby granted, all of which shall be constructed and maintained by the second party. Said crossings shall not be less than ten (10) feet nor more than one hundred (100) feet in width and shall be located at such points along said right of way as shall be selected by the first parties and they shall be entitled to such number thereof as shall be reasonably warranted by the business and operations carried on by them on the neighboring lands, and said crossings shall be of such type grade, under grade or over grade as the first parties may elect; first parties also reserve the right to construct and maintain pipes, ditches, flumes, etc., for the conveying of water, oil, gas or other like substances under, over, across or along said rights of way, or any part thereof; first parties also reserve the right to have flag stations established and maintained when the railroad of the second party or its assigns, shall be constructed and operated upon said land; said flag stations to be located at important points along said right of way, and at each of said stations all local and accommodation trains and local freight trains shall stop on signal; the location of said flag stations to be designated hereafter by first parties hereto.

All other trains to stop at not less than three stations located along said right of way; said

stations to be designated at any time in the future by the parties of the first part.

To have and to hold the same to the second party, its successors and assigns, forever, for the purposes aforesaid and subject to the reservations above provided.

In Witness Whereof, said May K. Rindge has hereunto set her hand and said Rindge Company has caused this instrument to be executed in its name and under its seal by its proper officers thereunto duly authorized this 2nd day of February, 1916.

MAY K. RINDGE,
RINDGE COMPANY.
(Seal). By May K. Rindge, *President.*
R. R. Adamson, *Secretary.*

(Duly acknowledged.)

A full, true and correct copy of original, recorded at the request of F. B. Scotten, February 2, 1916, at 45 min. past 4 p. m.

That is recorded in book 6216 of deeds, commencing with page 92, and ending on page 98.

Mr. Anderson: We will stipulate that R. R. Adamson is Mrs. Adamson, the daughter of Mrs. Rindge, and the Frederick H. Rindge named is the son and May K. Rindge is Mrs. Rindge the defendant.

(Witness, continuing): The company known as the Hueneme, Malibu & Southern never ac-

1816 tually constructed any railroad or improvements over the right of way described in the deed just offered in evidence. I am familiar with the right of way just described, and the location on the land of the right of way described in the deed to this second railroad company. I think the location described in the deed just read coincides with the line of railroad tracks which are actually on the ground which were built by
1817 the Hueneme, Malibu & Port Los Angeles railway, practically throughout, throughout its entire length.

Redirect Examination

By Mr. Anderson:

The railroad constructed by the Hueneme, Malibu & Port Los Angeles railroad has not been formerly turned over to the other company yet. I think the description just mentioned coincides practically with the center line of the
1818 railroad track as laid at the present time.

P. A. HOWARD,

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Anderson:

My name is P. A. Howard. I live in Los Angeles, I have lived in Los Angeles 29 years. My general occupation during that time was contractor; my particular line of contracting is

1819 building of roads. I have built a great many roads. I have, in the course of my business as a road builder, had occasion to figure on the cost of constructing roads. I have familiarized myself with the various items and elements of cost in the construction of such roads. I have recently kept in touch with the matter of the various items of cost in constructing such roads, and am now. I am familiar with the proposed
1820 route of what is called the main road across the Malibu Ranch, have visited it and gone over it. I have inspected it in whole or in part twice, and have given it a careful and thorough inspection. I have familiarized myself sufficiently with it to be able to give an idea of, or estimate the cost of, constructing a road over that route. I made such an estimate; in connection with the making of such an estimate, I examined the files in the county surveyor's office with reference to this
1821 proposed right of way. I examined the estimates there and all the data which they had. At that time I examined the documents which you now show me which are marked defendants' exhibit 5, particularly with reference to the summary on the last page. I went over these thoroughly. I arrived at a conclusion at that time as to whether that summary was a fair, reasonable estimate of what it would cost to do the work outlined in that summary at the time that it was made in the year 1916. I reached such

1822 a conclusion; I considered this a very fair estimate.

Q. I will ask you that as to each of the items contained on the estimate. A. That is how I derived my answer, was by going over each one of them carefully and I considered it a fair estimate in 1916. There have been changes in the matter of the cost of labor and material which would add to the estimate. I have familiarized myself with that. With regard to
1823 labor, I think that today a fair estimate would be 50 per cent advance over the price of labor in 1916. According to the estimate I have made I simply increased the figures of that estimate by 50 per cent. The figures are the figures per cubic yard of excavation and the cost of same, and the headwalls for the proposed road, and for the bridges and for the pipes. Those two items would be affected by that. I estimated
1824 the cost as based on this summary for 1916, which is $73,462.60, to that add 50 per cent, $36,731.24; excavation estimated would be total summary at the present time, $110,193.75. The headwalls of that item is $1571, 50 per cent would make it, $2356.50. They have estimated here, instead of estimating the concrete bridges, which are used generally now for bridge work, at the present time, they have estimated a piling and trestle bridge, on account of its being more economical. The cost of material at this

1825 time, I know to be, the basis of lumber prices to be, $31 a thousand, and the basis in 1916 was $21 per thousand, but that is for lumber only. The freight in 1916, the county had an arrangement with the railroad whereby their freight cost them—it would not be the commercial rate, and if we did work for the county we were allowed a different freight rate than they were allowed if doing it for private purposes. Under
1826 the present arrangement, and present management of the railroads, the county has had to advance its freight rate to the commercial rate and then add to that 50 per cent, which makes it about 60 per cent higher for freight and material, and to the price on the summary I have added 60 per cent. That is my opinion of what is the reasonable advance. Estimated cost of pipe here was on the original $25,364.40, to which I have added 60 per cent, making $40,-
1827 580.04. The cost estimated for bridges was in the original $85,350, to which I have added $51,-210, making $137,560, and the estimated cost of guard rail fence along the road was originally $2,880 and 60 per cent added makes $4,608, or a total of $294,301.29.

Q. Now, Mr. Howard, please explain if you will, what those headwalls are. A. Where a drainage pipe is put in across a road, they usually have wing walls, some call them wing walls, or head walls to catch and divert into the

pipe the flow of water. They are necessary and proper as a part of the construction of the road. The road would not be safely constructed without them. These items under the head of guard fence—that is the white fence that you see along the road, to call the attention of traffic to the fact that it is a dangerous place. I wouldn't say that they are absolutely necessary, but they are always put there as a case of protection. I don't think the county would build a road without it. It is common construction. Assuming that it were possible to construct a road through that country 10 feet in width, they would absolutely be as necessary, more necessary, in fact. It is a fact that on last Sunday, in company with yourself and Mr. Culver, and one or two others, I made a trip to this road in question for a special purpose. It was to inspect, not the main Malibu road, but the cross road that goes in about where the alfalfa patch is. Also to ascertain if it were as safe or practicable to build a road without bridges over the gulches. I have said that each one of the points where the bridges are specified is in this general summary. I don't think it is possible to build a road above the main route of the proposed Malibu road without constructing bridges at those points. The road which it is impracticable to build without bridges is the Malibu road, the main road. That is what it was inspected for, with a view

1831 of ascertaining about bridges. On Defendants' Exhibit 5 that we had this morning I note there are some thirteen different points named in the summary—that is, thirteen different bridges enumerated in the summary. And the points at which each of those bridges are to be located is specified in the body of the estimate. Those are the points I visited with you on Sunday with a view to ascertaining the necessity for the
1832 bridges at those points.

Mr. Anderson: Now, calling your attention, Mr. Howard, to Plaintiff's Exhibit "A," which is entitled "Malibu road from east line of Malibu Ranch to west line of Los Angeles county, estimated cost of constructing a 10 foot roadbed within the proposed right of way shown on county surveyor's map No. 8071, sheets 1 to 4," I will ask you if you have seen that document before? A. Yes. I saw it also in con-
1833 nection with the various other profiles and documents at the surveyor's office.

Q. I will ask you to state whether or not, in your opinion, that document in itself and of itself contains all of the elements necessary for the construction of a 10 foot road, or any road, across that main line proposed right of way

Mr. Burnell: That is objected to as incompetent, irrelevant and immaterial; and upon the ground that it is calling upon one expert wit-

1834 ness to give his opinion as to the correctness of the reasoning of the other one.

Mr. Anderson: I am not asking that. I am asking if it contains all the elements.

The Court: Read it, Mr. Reporter. (Last question read.)

Sustained. It does not appear that the document is intended to contain all the elements.

Mr. Anderson: I will ask you this, Mr. Howard: Could a practicable road be constructed
1835 from the data and that data alone contained in that document?

Mr. Burnell: Same objection.

The Court: Same ruling; sustained.

(Exception No. 12.)

Q. By Mr. Anderson: From your knowledge as a road constructor, and from your experience, state whether or not a road 10 feet wide could be constructed across that main line
1836 right of way with those elements only that are contained in that document.

Mr. Burnell: Same objection.

The Court: Same ruling.

(Exception No. 13.)

Mr. Anderson: Are there any elements necessary for the construction of a road—I will put it this way: Are there any elements necessary to bring the road to grade and to make a practicable road along the main line of the right of way, proposed right of way, other than pipes

1837 and grading? A. Why, I think it would be necessary to have bridges, in my opinion. I don't think a road can be built along that right of way without bridges or without the headwalls. On this particular occasion I visited the proposed right of way for what is called the Alisos Canyon road. I had not visited it before to go over it. I did go over it on this occasion. I went over it from the Malibu road north to the line of the Malibu Ranch. The data obtain-
1838 able with regard to this road is very limited. There is no line marked out and in fact they have never made any estimate with regard to the yardage. This is a very bad piece of road, very difficult to construct. It is through a very rough country and all of the way in rock and unless the center line was very well described, one could not form an opinion, excepting that it was a very difficult road to construct. It
1839 would be very difficult at this time to give any estimate of what it would cost to construct such a road. It would be more of a guess than anything else, it would simply be an opinion, having built a great many roads in the mountains. It would be very expensive. In comparison to the building of the Malibu Ranch road and taking into consideration the precipitous character of that canyon, I should judge that there would be—a fair approximation—that there would be about twenty thousand cubic yards to the mile

1840 of rock to move. To move it would cost $2.50 a yard today.

Cross-Examination

By Mr. Burnell:

Q. You have been up on this proposed road but you have not been over the proposed road to make any such careful estimate as you would make if you were about to bid on the contract? A. I proceeded exactly the same. I have not bid on it, I should not bid on it with the information I have at present and I would not be expected to. I am not a civil engineer. I am a practical builder.

1841

Q. Isn't it a fact that there is frequently a difference of opinion between practical road builders as to the advisability of putting roads in certain locations?

Mr. Anderson: That is objected to as not cross-examination. I do not see that it has anything to do with this. He was not asked about the location of these roads.

1842

The Court: Objection overruled.

(Exception No. 14.)

(Continuing.) There is frequently a very great difference of opinion between practical road builders and contractors as to the cost of construction, particularly of a difficult piece of road. So, for instance, when you find a matter is advertised for bids, you find considerable difference in the bids. Each man in making his

1843 bid usually bases it upon the estimated cost of actually constructing the road plus a reasonable profit. And there is often a considerable difference in figures as to what that would cost. With reference to the labor in building the road, I told you that the labor would cost approximately fifty per cent higher at the present time than in 1916. That might be due to unusual and abnormal conditions in the labor market which existed probably on account of the pres-
1844 ent world war. It is a fact that that war has taken away a great many of the men of the ages and type of men that are usually used in this sort of construction work. As to this advance of 50 per cent in the price of labor, since 1916 in particular my attention has been called to it.

Mr. Anderson: Now, if the court please, at this time we feel that that is all the evidence that it is necessary for us to put in on this par-
1845 ticular feature that we have been trying, that is, the question of necessity and the question of location, with this exception, that through a misunderstanding Mr. Patton who is out of our reach, will not be here until tomorrow. I have explained to these gentlemen the situation and they agree that I may put him on then. It will possibly be a very short matter we want him for.

Mr. Burnell: Yes.

1846 Mr. Anderson: With that understanding, with this branch of the case we rest. Mr. Burnell has very kindly stated if we should find we have overlooked anything through inadvertence he won't object to our putting it on.

Mr. Burnell: Oh no; we are not going to try this case on technicalities or in a technical manner.

Defendants rest.

1847 PLAINTIFF'S TESTIMONY.

ERNEST F. DECKER,

a witness called in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

My name is Ernest F. Decker. I live in the Santa Monica mountains. My attention being called to this map which is defendants' exhibit
1848 No. 6, I can point out upon the map where my place is located on the Santa Monica mountains.

Q. Now, if I might describe this map to you somewhat, this purple line extending from the Ventura county line on the west to Las Flores Canyon on the east is the northern line of the Malibu Ranch. The line marked in yellow extending from Triunfo post-office on the north in a generally southerly direction is the so-called Decker road. The canyon marked Lachusa Can-

1849 yon is Lachusa Canyon; the canyon marked Nicolas Canyon is the Los Alisos Canyon. This canyon here (indicating) is Encinal Canyon, and these various red lines indicate what Mr. Scotton has testified are roads located to the north of the Malibu Ranch.

(Continuing.) I think I can locate the grade, about right in here (indicating on map). The place marked X to the north of the letter M in the word "Malibu," X-11. I have lived there in
1850 the neighborhood of 33 years. That is the place which has been referred to as the Marion Decker place. I have there, of my individual property, 200 acres; with my mother and sister, we have 540 acres. Of my 200 acres I have under cultivation approximately 75 acres. Of the 500 acres belonging to my mother and sister we have under cultivation 75 acres, I should judge, altogether. That is, altogether, my sister's and
1851 my own; my mother has no land that is under cultivation. Of the other land that we have that is not under cultivation there is possibly 100 acres yet that could be farmed if cleaned off of brush, rocks and one thing and another, and the balance is grazing ground for cattle and horses. I have cattle or horses on my land, 48 head of cattle and 12 head of horses. I haven't exactly a fence around my place, not entirely around it. I have a fence around some of it, a barbed wire fence running around my farming

1852 land, partly comprised of poultry netting 3 foot high and two wires on top—two barbed wires. That poultry netting runs around only a part of it, pretty close to a mile of it. Posts are buckhorn, posts I have put up myself. Where the fence is not poultry netting and barbed wire above I have simply two barbed wires, a two wire fence. It is, I should judge, about 4½ feet high. In the past two years I have had cattle
1853 there. Prior to the last two years I have never in my lifetime had anything to do with a cattle ranch. In my opinion the fence which I have on my land at the present time is sufficient to turn the cattle from my cultivated land. The condition of the land upon which my cattle graze is some of it rolling land, other is hilly, brush land. I am familiar with the land just to the south upon the Malibu Ranch, which is used for grazing cattle. Compared with that land, my land
1854 is approximately the same kind. Part of the fence that I have there upon my land, as a matter of fact, turns the cattle and part of it does not. Part of it near my house is practically down; been in there a long time, for a number of years and no care taken of it, and will not turn stock. The part that is up where I say I have two barbed wires, turns the cattle. Where the wire is tight it will turn cattle and horses.

The Court: That is poultry wire; it is woven

1855 wire? A. Do you mean the principal part—no sir, it is poultry netting.

The Court: What is it? A. Poultry netting.

The Court: It is not the same as woven wire fence as described by Mr. Otis? A. No sir.

Q. By Mr. Vallee: Now you say that you had 75 acres under cultivation and about 100 acres more that could be cleared and cultivated,
1856 is there any reason why you have not cleared or cultivated the other 100 acres in the past?

Mr. Anderson: Object to that as immaterial and purely speculative and self-serving.

The Court: Objection overruled.

(Exception No. 15.)

A. Why the principal reason that I have not cleared any more land is because I could not get my crops out without roads.

On the 75 acres under cultivation at the pres-
1857 ent time I have about 30 to 35 acres of beans; the balance is barley and oats and some corn. I have not yet harvested my beans this year. I had beans last year, possibly five acres. I could not say how many tons I got. Out of five acres I think I got in the neighborhood of 12 or 14 sacks of beans, I put them in very late and I did not get the crop I should have got. I took some of those to market, to Albert Cohn. I hauled them out across the country from my place to

1858 Triunfo post-office, and then to Los Angeles over the highway.

The Court: I wish he would describe how he got out of there. Just step down to the board. I don't want to interrupt the examination but I would like the witness to testify to that at this time.

A. (Referring to Exhibit 6.) Starting from my home here, crossing up through the summit, up in through here, by Mr. Vaughn's place and
1859 on out over through here, and then out over to the Mathieson ranch and then to the Triunfo post-office. After I crossed Mathieson ranch I crossed Russell ranch before I got to Triunfo. By Mr. Vallee:

In hauling the beans out I had a good two-horse team and spring wagon. I hauled at one time not over four or five sacks. One sack of beans averaged in weight 80 pounds. I have
1860 never attempted to haul more than four or five sacks, simply because the road is steep and rough and the teams would not pull over five or six hundred pounds at a load and get out in reasonable time and without injuring my stock. In my own family there are my wife and boy. My mother and sister do not live on the ranch; they live here in the city. They have lived on the ranch.

Q. When did they last live there?

Mr. Anderson: Object to that as immaterial,

1861 if the court please. It seems to me it don't make any difference when they last lived there, if they are not there now.

The Court: Overruled.

(Exception No. 16.)

A. Why, I should judge it has been in the neighborhood of 15 or 18 years, possibly more, that they have not resided there. There is a school house in that neighborhood. I don't believe I could hardly point exactly to it, on the
1862 map. From my place it is about 3 and ½ miles. In attendance at that school house I believe at the present time there is thirteen children. I have not always used the route that I have described at Triunfo post-office and over the state highway to Los Angeles. Up until August of last year I used the Malibu road and down the beach to Santa Monica. I don't remember the date I ceased using that road, but it was in
1863 August of last year. The reason I stopped going over that road is that the Rindge people closed the gates up and ordered us not to trespass on their land. I know how many miles it is from my place to the Triunfo post-office over the road: It is about eleven miles. From Triunfo to Los Angeles over the state highway, I am not positive as to the distance, but I believe they call it about 40 miles, or 41 miles—near there.

1864 Mr. Anderson: If you would like me to do so I think I can state.

Mr. Vallee: Very well.

Mr. Anderson: It is exactly 39 miles from the Triunfo post-office where the gate is, going into the Russell ranch, to the center of Los Angeles, First and Broadway.

Mr. Vallee: Mr. Anderson states that it is exactly 39 miles from the Triunfo post-office
1865 where the gate is, going into the Russell ranch, over the highway to the center of Los Angeles, to First street, Los Angeles. We will stipulate that is correct.

(Continuing.) From my place down through the Rindge Ranch and over the Malibu road to Santa Monica, it is 28 miles; to Santa Monica from my door. There is an old way down there from my ranch to the Malibu road; our old wagon road that runs to the coast from my
1866 place. That is the road I am estimating the distance over. It comes down the Encinal Canyon.

Mr. Anderson: It is the road you saw going up the mountains, Your Honor. It was pointed out as the Decker road.

The Court: Yes, I remember it.

Mr. Vallee: Now, will you describe in detail the road from your place to Triunfo, as near as you can? Make as good a picture of it for the court and jury as you can, starting at your place

and going to Triunfo. A. Starting at my place we have for two miles pretty stiff grade, almost all up—straight up in places. From the two mile point there is possibly a stretch of road in the neighborhood of two and a half miles or more that is practically up and down, or in places level, to Mr. Vaughan's place. That is, there is more down hill, I will say, than there is up at that point. From Mr. Vaughan's place out on the county road, that was built in last year I believe or year before, the road there for a stretch of two or three miles is a very good road; but taking from that point—from Malloy Point to the bottom of the hill, the road in the worst places averages 30 to 31 per cent grade, as I understand, and it is almost impossible for a team to pull more than five to seven hundred pounds. It will pull them to death, 700 pounds, if kept up steady every day or two. From the bottom of the Malloy Hill we go down through by the Little Lake out into the Mathieson highway, and the road is a fairly good road from there on to Triunfo post-office. I have been over the road from the point on the map (Exhibit 6) where the X-5 appears, to Cornell. From that point that you mentioned is almost an impassable road, I will say, until you get to Bess Culter's place. That would be in the neighborhood of this vicinity, I should judge (indicating on map, Exhibit 6) where appears

upon the map the letter N in the word "Santa Monica Mountains;" from there on to Nigger Hill is an up and down road very rough in places. There is pieces, of course, that is smooth—that is, what I mean, through some portions of flats until you come to the summit of Nigger Hill. Nigger Hill, I will say is almost impassable at times, especially in the winter time, and is a very hard road even at the best in the summer time, the grade, I suppose, ranging from a percentage of 12 to 15 per cent to a percentage of 37 to 40 per cent; from the bottom of Nigger Hill out to Cornell it runs out on a down grade of possibly 8 or 10 per cent to Cornell, running to that in some places. I have been over the road from Cornell to Triunfo; it has been several years since I have been in there, but I remember that it is an up and down road through the canyon from Cornell up to Russell ranch, and at times is impassable on account of high water; and from the Russell ranch, of course, is on the highway. The condition of the road from the Decker place to that road which we called the Decker road, in the winter time, and through the winter season I will say is impassable almost. I have been out over that road. I went out over that road last winter when it was pretty hard to get through on foot, and impassable with a saddle horse. Prior to the time that the road was closed into the Malibu Ranch,

1873 I traveled over the Malibu Ranch road through to Santa Monica and Los Angeles, all the time, to and from my ranch for 32 years.

Q. Do you know how many persons there are actually residing on that property in and around on the plateau, which we have referred to as the Decker plateau, to the north of the Malibu Ranch? A. I don't know as I can tell you the number. There is a lot of people up there which live in that immediate vicinity.

1874 Q. Just name us as many as you can, showing upon the map the location of their property where they are living and who lives on the property.

Mr. Anderson: West of Trancas canyon?

Mr. Vallee: Yes.

Mr. Anderson: Between what canyons?

Mr. Vallee: Between Trancas canyon and the Ventura county line. Just step down so that

1875 you can point out where they live. A. I don't know as I can point out just where they live; right north of me is Lulu Carr's place; I think she has 120 acres. There is no one living on the place with her at the present time. I don't believe she is residing there at the present time. She was there a few weeks ago but not at the present time. I don't know whether she came to stay or not, but she had previous to this lived there within the last six or eight months, lived there right along for two or three years. I sup-

1876 pose she has in the neighborhood of ten acres in cultivation. Her mother owned 40 acres just below her and they were together several months. Her mother's name is Mrs. McClellan. I say that her mother had 40 acres adjoining her—I think her mother had been living there entirely—I don't know whether she has been there right along but she has been back and forth on the place a good many times in
1877 the last year but I don't know as she has lived there. The next place to me would be Mr. Humphrey's place, somewhere in this locality (indicating on the map, Exhibit 6), I cannot figure it out just where. His wife is living with Mr. Humphrey and I believe at the present time his daughter. I believe they have 160 acres. I should judge in the neighborhood of 25 acres in cultivation. The next person, I believe, would be southwest of him, Mr. Weiss' place. In Mr.
1878 Weiss' family I think there are three children, himself and his wife. I couldn't state how many acres of land Mr. Weiss has; I think they have 80 acres; I am not positive. Maybe more. I suppose he has ten or twelve acres under cultivation. They have not any cattle or stock grazing on the balance, I believe. The next southwest of Mr. Weiss would be Mr. Campbell's place; I think so. He is a single man. He has 160 acres. I think at the present time he is not living there, possibly seven or eight years since

1879 he has been there. Right south of him, south of Mr. Campbell's place is my brother's place. He owns 150 acres of land. His name is Charles M. Decker. There is a wife and six children, I believe. I think they have in the neighborhood of 45 acres, 40 or 45, in cultivation. Besides the 150 acres they have 120 acres or 140 acres more, I believe. My brother has some cattle and some horses. I think they have ten or twelve head
1880 of cattle and three or four horses. The next place would be north or west of my brother's place; it is Mr. Keppler's place; Mr. Keppler, his wife and a child, I believe. They have 160 acres. I should judge they have got 25 or 30 acres under cultivation. Cattle—yes, but I could not say how many they have, they have quite a bunch. The next place would be northeast from Mr. Keppler's, Mr. Malden. I think Mr. Malden is in the neighborhood of this section, being
1881 the point on the map close to the letter "K" in the word "fork" in "Arroyo Sequit east fork." In Mr. Malden's family is a boy—one child. I believe he has 160 acres; I am not positive as to that, though. I think he has in the neighborhood of 15 or 18 acres under cultivation, possibly more; I couldn't say as to that. The next family I believe is Mr. Parks in the Sequit Canyon. I am not positive as to just exactly the position, whether it is the east or the west, but I think that he is in the west fork of that canyon.

1882 I am not positive as to that. I couldn't say how many in his family; I don't know how many there are; he has a wife and children. I couldn't say as to how many acres he has. The next I think would be Mr. Kelso's place, I believe, in section 9; I think he is a single man. He has 160 acres. I think he has in the neighborhood of 20 acres in cultivation; I think no stock or cattle at present. He has had some horses there, I don't know how many, but I know he has been
1883 plowing some land. There are some families there that I couldn't say; in fact, I don't know just exactly where they are located. There is Louis Berger, but I can't say. He is in, I guess, the east fork of the Sequit Canyon, away up, but I could not tell just where he is. I do not know how many he has in his family. I think he has a wife. I couldn't say as to how many acres he has. The next family that I remember
1884 is Mr. Kielhofer's place somewhere here (indicating on map, Exhibit 6). He is somewhere, I believe, in the east fork of the Sequit Canyon near the summit of the mountain. It would be on the south side of the summit. In his family he has, I think, a wife and child only. I believe he has 160 acres. I don't think he has any cultivated as yet. The next family is the Mason place or old Drake place. It is in the Sequit Canyon. I think it would be in the east fork of the Sequit Canyon, too. I also believe the

1885 Ed Lewis place adjoins the Mason family, just a man and wife. I don't believe I can tell you how many acres he has; they have quite a bit of land there. Mr. Lewis does not live upon his property; in fact, I don't believe that they have lived there for quite a while. As to the next place that I remember, there are several more down in that canyon, but I don't know who they are. They are newcomers that have moved in there recently, and I couldn't say what they have
1886 or who they are.

Q. Can you tell us of any other families up in this plateau north of the Malibu Ranch between the Trancas Canyon and Ventura county line? A. Mr. Fitzpatrick.

Q. Is he in Ventura county or Los Angeles county? A. In Ventura county.

Q. Any one else? A. Mr. Mundell.

Mr. Anderson: Wait a moment. We object
1887 to any examination of this witness as to those people who live in Ventura county, on the ground that there is no showing here that they have present access to any outlet that connects in any way with the proposed roads in suit, or that will connect when the proposed roads in suit are established.

Mr. Vallee. It is not connected up as yet. We assure Your Honor that we will connect it up.

1888 The Court: Do you expect to show the connection?

Mr. Vallee: We expect to show by witnesses who live in the Yerba Buena district that they have means of access to the proposed road.

Mr. Anderson: That does not have to cross private lands?

Mr. Vallee: Over a highway to the contemplated road.

1889 Mr. Anderson: If you expect to connect that up, we withdraw the objection; but we reserve the right to strike out unless it is connected up.

Mr. Vallee: You say Mr. Mundell?

A. Mr. Mundell. (Continuing.) He lives in Ventura county. It is not far from the Ventura county line, or the northwest corner of the Malibu Ranch that he lives; I couldn't say as to just exactly the distance. I don't believe it is over two miles—a mile and a half or two

1890 miles, somewhere around there. In Mr. Mundell's family there are several children; I don't know how many; possibly four or five children. Mr. Lane lives in Ventura county. I think he has a wife; I am not sure but what he has one child. From the northwest corner of the Malibu Ranch I think that they are over quite a ways. I am not positive as to how far, but approximately I believe they are in the neighborhood of three miles—two to three miles.

1891 Q. Is there anyone else that you remember of?

Mr. Anderson: Of course, my objection goes to all of these.

Mr. Vallee: Oh, certainly.

A. There are several other families there I know of that live there, but I can't state their names. The Kincaid family lives on the west side of Trancas canyon. I can not say that I
1892 know anybody else who lives on the land. Mr. Vaughn lives about a half a mile west of where the cross-road goes to Cornell, the east and west road, where the road branches at X-5 on the map. There are in Mr. Vaughn's family three, I believe. I think they have something around possibly 200 acres. I think they have about 30 acres in cultivation. He has some cows, I believe, and horses. I think he has four head of cattle and three head of horses. I know a man
1893 named Boden. He lives in back of Mrs. Haney's place, or in that vicinity. I believe she is on the north side of the summit. I am not positive as to that. I do not know how many other people there are in his family. I know his brother, Melvin Boden. He has a place near the vicinity of his brother, whether on the north side or south side of the summit, I could not say. Mr. Haney's place is on the south side of the summit. It is east of Trancas Canyon. Mrs. Haney's place, with reference to the Vaughn

1894 place X-5, is possibly about two and a half miles from Vaughn's place on the same road running east and west to Cornell, on the road, about two miles east of Melvin's place. She has two boys, I believe. I think they have 200 acres. I could not state how many acres she has in cultivation; approximately 15 or 18 acres. I know a man named Herron. His place lies directly east of Mr. Vaughn's place at the summit of the hill or Shirley Grade. It is on the south side
1895 of the summit. I could not say how many there are in his family. It is about half a mile, I should judge, east of X-5, Vaughn's place. I believe he has 160 acres, possibly ten acres in cultivation. I don't think he has any stock. I know a man named Thew. He lives at the head of, or branch it would be—it would be the left fork of Trancas Canyon, possibly two and a half or three miles north of the north line of
1896 the Rindge Ranch, about three quarters of a mile south of Mr. Vaughn's place on an air line. In his family I believe that there is himself and wife and two children, I believe, or two young ladies. He has 160 acres; I should judge he has 12 or 15 acres in cultivation. He has some horses; he did have four head. I know a man named Auld. His place lies directly north of Mr. Thew's place. I believe that his place and the Vaughn place adjoin. I think it would be on the south of Mr. Vaughn's place. He has no

family. I think. He has 40 acres, I believe. I think he has none in cultivation. I do not know whether he has any stock. The nearest store at which I could purchase feed for my horses and stock, which I have to purchase, is at Los Angeles. The nearest physician is at Los Angeles. There are no physicians down at Calabasas that I know of. Santa Monica is the nearest if we could get there. I couldn't say as to whether there is a doctor at Camarillo. At the time I have traveled down over the Rindge Ranch during the years which I say I went down that way in going to Santa Monica and Los Angeles, I observed a railroad in operation. I never made the request of anyone connected with that railroad, to ride upon it. I never saw any passenger trains being operated over it. I never saw any freight trains, more than the Rindge people hauling their grain to the Malibu warehouse. To propel the railroad they used gasoline power at times when I have seen them; and at other times I have seen them use horse power—animal power. During the time that I went over the Rindge Ranch going to and from my home, I never at any time took any farming implements or other property of the Rindge Company or Mrs. Rindge, or any property upon that ranch. I never to my mind seen anything that I took or had anything on my place that the Malibu people could claim. I never took anything. I

never broke any of the fences upon the Rindge property or killed any of the Rindge cattle, nor ever attempted to. I never stopped at the Rindge house. Now, I will take that back; I did at one time when I was a small boy. It is now 25 years ago or 20 years ago. That is the only time. As to the road from my place out to Triunfo which you term the Decker road, for three months last winter the road was washed out so badly that you could not get across except by foot, what I call impassable to get by with provisions. To go from my place to Triunfo and over the so-called Decker road and into Los Angeles with a two horse team and a spring wagon, driving continuously, it would take 12 good hours without killing the team. It took me to go from my place to Los Angeles down through the Rindge Ranch, through Santa Monica and into Los Angeles, about nine hours.

Cross-Examination

By Mr. Newby:

To go back to my home from Los Angeles over the old road takes longer than it does to go down, possibly an hour and a half longer. So it would take ten and a half hours to make the return trip with the same team I used going the other way. The old road was all the way from 15 per cent grade to 30 per cent grade. The elevation at the house is about 900 or a thousand feet at my house. The elevation at the Tecum-

1903 seh Pass, I suppose, is in the neighborhood of one thousand or twelve hundred feet. I don't know Tecumseh Pass by that name unless you refer to the Decker road coming up to the Malloy place; that is known also as Tecumseh Pass. I don't know as I can point exactly to that on the map. I suppose it would be about at the summit, about in here (indicating). That is just southwest of the letter "S" in the word "Santa Monica." I say the elevation at my
1904 place is 900 feet to a thousand feet, and it is only about 300 feet until you reach the summit; it may be more; I couldn't say as to that. It may be more than what I have stated. I could not say positively. I have been over the road a good many times although I have never figured as to how far or what the altitude is at that point. I did not examine any of the government maps or county maps to ascertain the elevation
1905 at any point on that road. The place I indicated there as the summit is the highest point on the road going from my home to Triunfo post-office, I believe. After you pass the summit it is not a reasonably good road except when it washes out in the winter time; it is the steepest part of the grade from that point on. After you pass the summit going north into the Mathieson ranch is the steepest part of the grade. The grade there is in the neighborhood of 31 to 37 per cent; I have heard so, and taking it from

1906 teams pulling up with five or six hundred pounds and also seeing machines go up there, and I have thought it was about that percentage of grade, largely based upon hearsay and my ability to drive over it with a team. I have heard no engineer speak upon that. I do not know the percentage of the grade of the proposed Alisos Canyon road. I do not know that you have to reach an elevation of a thousand feet approximately from the beach at the north end of the
1907 ranch. I stated that the road from Decker's to Triunfo post-office last winter washed out for a period of about three months, in several places, on the new road that had been built; also the old Malloy grade was washed out badly. From Mr. Vaughn's place, X-5, going north, to the Malloy place is about 3 miles, I should judge. There was a stream of water coming down there that washed it out. It crossed the road in a
1908 great many places and also went the other way of the road. Those washouts could easily be taken care of by proper road construction. Where I traveled through the Malibu Ranch in 1917, there were sometimes washouts through there. I have never seen the time when I was unable to get down through the Malibu Ranch with a team. I sometimes went around by the beach on the sand. The road at times was washed out in places so it was impassable. That is true of all mountain roads. I men-

1909 tioned some points at which I stated that there were no supplies and no physicians. I never tried to get any physician at Oxnard; I never went that way, nor Van Nuys, nor Hueneme; all of those towns are closer than Los Angeles. I don't believe San Fernando is closer. I couldn't state exactly how many miles Van Nuys is from Triunfo. I believe, though, it is in the neighborhood of 30 miles. I also stated that
1910 Los Angeles was the closest place at which I could get feed. I have never bought any feed for my stock. I said that that was the closest place that I could get feed. I mean by that, for my horses when I came down to Los Angeles. I never attempted to go any other direction—any other way, because I had a home here in Los Angeles; I have a home here. I have lived here possibly 10 years altogether, off and on. That is one reason I desire to trade at Los Angeles
1911 where my home is. I raised enough crops on my place to feed my horses and cattle, so that I don't mean that I had to carry food-stuff for my stock into my ranch from Los Angeles. I never bought any feed for my stock. When I formerly traveled by the Malibu road I carried a larger load than I now carry to the Triunfo, all the way from 900 to 1200 pounds, both ways, either way I wished to go. Going up the old Decker road, 32 per cent grade, I could not always carry 900 to 1200 pounds. I have often

1912 unloaded part of the load and went back after it. I never tried to carry that much on the Triunfo, because I knew it was impracticable. By adopting the same precautions I could have. In speaking about the road from Cornell to Triunfo post-office I said that it was sometimes impassable from high water. I think it never is impassable from any other cause, with the exception of wash outs, which I have stated is a characteristic of any mountain road. I could
1913 not say whether the topography of the ground along that road is such as to permit of road construction above high water line. It possibly could be. At Nigger Hill the percentage of grade is 30 to 40 per cent for possibly a mile and a half. I think that is not so located that a roadway could be constructed there. The mountains at that point are so rugged, and rough that I believe it would take a lot of money
1914 to make a road, a great deal more than along Alisos Canyon. The only other difficulty is Malloy's grade.

Q. With the exception of those two points there would be no great difficulty in constructing a road? A. Do you mean to Malloy's place?

Q. From Vaughan's to Triunfo. A. I think there could be a road made that way, but it would cost a lot of money.

The Malloy Hill is north of Vaughan's. I think it is about three miles, possibly better. I

1915 do not know the elevation at Mr. Vaughan's place. I have stated that at the summit it was about 1200 feet. I don't really know how much lower Vaughan's place is than that; it is quite a little drop down to Vaughan's place; possibly 400 or 500 feet, 600 feet, maybe. I think Vaughan's place is higher than mine. My place is about 1000 feet, I think, I am not very familiar with that. I don't know if it is a fact
1916 that there is only about 200 feet elevation from Mr. Vaughan's place to the pass. I have never informed myself on that. I have seen automobiles on those roads, Fords, principally. I have seen the county surveyor's autos on the road. Those are Hubmobiles, very large car. I saw them go down within a quarter of a mile of my house; that is at X-11, on Exhibit 6, I never saw them at my brother's house, Charles Decker's. I only saw them on that road leading from Triunfo to my
1917 house here at X-11, and the machines had to be pulled out of my place to get back. It had to be pulled about two miles to get back. That was the Hupmobile, county machine. The Fords did not negotiate it going back; they had to be pulled out also a distance of about two miles. I pulled them out. I hitched to the machine two great big horses that weigh 3000 pounds. I couldn't state the weight of the Hupmobile. I was able to pull them up with the help of the engine.

1918 They are the same two horses that I used for pulling out this crop of barley.

Q. Will you please indicate on the map (Exhibit 6) the place to which you pulled this Hupmobile? A. I can do it approximately anyhow. About from this point X-11 to the summit of Barney's knob, we call it. I think that it is about in this point or in the neighborhood here (indicating on map), a little east of the figure 16; somewhere in the neighborhood. I am not
1919 positive as to the exact spot. I suppose it is in the neighborhood of a mile up from Vaughn's place, or a little better, probably. After I pulled them to that point, then they went back without difficulty. They did not have any tire or engine trouble. The county chauffeur was driving, I believe, as far as I know, the chauffeur of the county attorney. I have farmed other than on this ranch. I have been a landscape gardener for several years; I was until a num-
1920 ber of years ago, for about nine or ten years, I believe, throughout this 32 years period. I have worked for several different farmers, here in this locality and also in the north, for a period of a year or so. With reference to the barbed wire fence which I say turns horses and cattle, I have some hogs but only a matter of eight or ten heads. I did have more. I would not say that a barbed wire fence would turn a hog. I had my fields fenced with

1921 netting to keep the hogs in. I think it would not turn sheep either. I would not say that it was a practical thing to fence a general stock ranch where there are horses and cattle and hogs, with a two barbed wire fence.

Redirect-Examination

By Mr. Vallee:

It takes me longer to go back from Los Angeles to my home through the Malibu Ranch than it does to go from my home to Los An-
1922 geles through the ranch, owing to the grade, when we come up the coast to traverse my grade in order to go to my home. It takes in the neighborhood of three and a half to four hours to drive from Triunfo to my place, and approximately the same time to go as to come. Last winter the road was washed out about three months. To go from my place to Hueneme at the present time I would have to go out to Tri-
1923 unfo and take the state highway down to Camarillo, and then down to Hueneme. I do not know how large a place Hueneme is. I am not positive whether the highway runs through Oxnard; I believe it does, or near there. I do not know how large a place Oxnard is. After I left the Hupmobile at Barney's Knob, I did not see the Hupmobile again. I don't know what became of it after it left Barney's Knob. I do not know what time they left Barney's Knob. I do not know what time they got into Los An-

1924 geles. I say I pulled a Ford out; the Ford went down to my home. The Hupmobile came about a quarter of a mile from the house, around the road. I pulled the Ford to the same place, nearly, Barney's Knob. No other machines have ever been close to my place, besides the Hupmobile and the Ford; both of those had to be pulled out.

Recross-Examination

1925 By Mr. Newby:

My brother-in-law was driving the Ford. That happened in the last week of the hunting season, just last month, this year, last August. When that road washed out and remained so about three months, it was not repaired for sometime; I don't remember the circumstances exactly but it was quite a while before it could be traveled. I don't know who repaired it; it was the men that lived there, and I think the

1926 county had something to do with the repair. I suppose it could have been repaired sooner if we had had the money to do it. I think at that time men were very short to get, laborers, to come in and work on the road. I think that was the main reason.

Q. What period of time did the water itself remain there, making it impassable? A. I said it was there for pretty nearly a month at one time, but it was raining, so it would have been impossible to repair it. After that it could have

been repaired. It was sort of drying out. The time that I said I took about 12 hours to drive from my place to Los Angeles I was driving a team, a horse and a buggy. I made that trip just once; it has been a number of years ago; I don't remember; it was when I was a young fellow. I suppose in the neighborhood of 25 years ago; I was a boy at that time. I have lived in that vicinity for the last 33 years. I stated, I think, that I have been back and forth through the Malibu Ranch. This time that I went through the Triunfo, about 25 years ago, I was driving a team of horses and a buggy; a small buggy. I had no load in it. I suppose it was about 20 years ago, nobody with me. I have never driven that trip since, from my place to Los Angeles. When I took those sacks of beans was last year. I took them to the store but could not sell them there at that time. That was not caused by the condition of the road. The road that I took those beans over was the Triunfo road. I had a wagon. In fact, we packed the beans over toward this side of Fred Vaughn's place to the Malloy place, and there I had a wagon and went on down to the highway. I didn't drive from there on down. I sent them down in a truck from Triunfo. So that the beans were carried from this side of Mr. Vaughn's place, over the pass, past the new

1930 road to the Malloy place, and there I took the rig and hauled them down.

Q. So your estimate of the time it would take to go from your place to Los Angeles over the Triunfo road was based on an experience you had about 20 years ago? A. That road I didn't travel at the time. I went over through the Shirley grade of the road down the Nigger Hill, which was merely a trail at that time, impossible for a wagon to make such a trip.

1931 Q. Where did you go with the buggy about twenty years ago that took you 12 hours? I wish you would describe that road. I am confused about it. I would like you to make it clear. A. I went through—taking the buggy I didn't exactly go from my place—I will state that here—but we stayed at the Culter place over night, or I did, and went from the Culter place down the old Nigger Hill trail up through

1932 Cornell and up to Russell's ranch and out the old highway to Los Angeles. We started about the Culter place, I should judge about here, just east of the figures 12 (Exhibit 6) and took this road out through the Nigger Hill, I suppose in the neighborhood of this vicinity (indicating on map) Sierra Canyon road, and out through Cornell. After I got to Cornell I went then up this canyon to the Russell ranch and out the highway. I traveled the road east via Cornell. As a matter of fact, I have never tested out the

1933 time it would take to go from my house via Vaughn's place, the Malloy Hill and Triunfo post-office to Los Angeles.

Redirect-Examination

By Mr. Vallee:

I stated that last year when I took these beans out that I packed them. I packed them on a horse.

Q. You said that you could take the load when you used to go in through the Malibu
1934 Ranch and up Encinal Canyon to your place—that you used to take the load to the foot of the grade in Encinal Canyon and unload part of it and take part of it up and then come back and get the other part. How far would you have to go from the point at which you unloaded to your home? A. Why, I suppose a mile or a mile and a quarter or better.

Q. You stated that if you came in from Tri-
1935 unfo with the same load that you would also have to unload it. Now, at what point would you have to unload upon the road from Triunfo into your place? A. That is only that trip in particular. I mean in taking a load in the last year I mean that we had to unload at the foot of the Malloy grade in order to pull the grade. That means a time of five or six hours to come back and get the balance of the load from that part of the grade. The foot of the Malloy Hill from my home is about eight miles; I would

1936 have to come back the next day to get the load that I had left—go clear on in the eight miles and the next day come back and get what I had left. Going one way I would have to go a distance of a little over a mile after I unloaded, and going the other way to Triunfo I would have to go a distance of about eight miles.

Recross-Examination

By Mr. Newby:

1937 The Malloy grade is what prevented me from carrying the load across at times.

Q. What was there to prevent you from taking the load out that you had at the foot of the Malloy Hill, then unloading part of it and taking the portion that you could not carry across, and coming back after the other, without going the 8 miles to your house? A. Simply because it you got there in the evening you could not feed your stock; you could not haul

1938 hay in order to come back there; you would be one or two o'clock in the morning getting home.

(Continuing). I figured out when I got to the Malloy Hill that I would simply take what I could get across and come all the way back the next day and get the balance of the load; I have done that on several different occasions, possibly eight or ten times during the last year, hauling provisions principally, coming in from Triunfo to my place. I had nothing to haul out from my place to Triunfo. Coming from Tri-

1939 unfo I had a load of groceries. I would many times take them to the bottom of Malloy Hill before unloading—on the north side of Malloy Hill; then I used to leave them there and then went on home, taking a part of the load. Then I would go entirely to my home and then sometimes return the next day for the balance. It wasn't possible for me to have taken the groceries across the Malloy Hill and then gone back and taken them all home. Lots of times I had
1940 in the neighborhood of 1,000 pounds—I don't remember just how many times, five or six or eight times—I don't know. I am living there. I have lived there for the past four and a half years steady.

Wednesday, October 9, 1918,
10 o'clock a. m.

(Stipulated jury present.)

1941 RALPH E. KINCAID,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as folows:

Direct Examination

By Mr. Vallee:

I live up in the Santa Monica mountains, in Trancas Canyon, on the west side. I have 120 acres of land there. Other members of my family have, I think, about 2,200 acres. At the present time we get in and out of our property by packing over to Ernest Decker's and we go

1942 from there to Triunfo, over the Triunfo road; that is the road from Ernest Decker's through the Mathieson ranch and then the Russell ranch to Triunfo. I have no road from my place now to the Decker property; we go over our own property which runs pretty near to Ernest Decker's house. I have traveled over the road from Ernest Decker's to Vaughan's and from Vaughan's as far as Cornell. I have never gone from Cornell to Triunfo. Describing the road
1943 in detail from Ernest Decker's place to Triunfo, via Vaughn's place and the Mathieson ranch, when we leave Ernest Decker's there is about between two and three miles of pretty stiff grade. Then the road goes down hill to Mr. Vaughn's, possibly a mile and a half or two miles. From Mr. Vaughn's for about two miles it is pretty good road. Then you start on grade. I don't know what they call that grade;
1944 it is the new road that was fixed last year. You go down to the Malloy place and from the Malloy place down it is a very steep grade into the canyon. You go down that canyon—that is in the Mathieson ranch—and through the Mathieson ranch, which is pretty level and through the Russel ranch to Triunfo post-office. I have been over that road, in all, probably thirty or forty times. I have lived up in the Santa Monica mountains pretty nearly a year this time. Describing the road in detail from Vaughn's

1945 place, the point X-5 on the map, Defendant's Exhibit 6, to Cornell, leaving Mr. Vaughn's place you go down a fairly steep grade into a canyon; then you go up another one about a mile or mile and a half to Mrs. Haney's place; then it is not so bad for two or three miles until you come to the summit of Nigger Hill. Down Nigger Hill it is very steep, something like the Malloy grade, if not worse, to Cornell. I have hauled loads over the so-called Triunfo or Deck-
1946 er road. I can haul with a two-horse team and a spring wagon from Triunfo to Ernest Decker's about 600 pounds, I think that is about all the team will take up that grade; I refer to the Malloy grade and a good many other pitches on the road which are just as bad—short ones. I have not hauled any loads over the road from Vaughn's place to Cornell. I have cattle upon my place; there is 24 head there at present. I
1947 have had more in the past; two years ago we had about 50; just one hog, no sheep. I have a fence around the place, pretty near all around. That fence was constructed, part of it, last year, and part of it the year before, I think, a three wire barbed wire fence, buckhorn posts, put up myself, cut there on the place. Our property adjoins the Rindge property. Prior to the construction of this three barbed wire fence, there was not any fence between the Rindge property and our property. The cattle used to come up

1948 on our land from the Rindge property. There has been no Rindge cattle come through the fence since I am there. The fence upon our land has turned our own cattle. There is a trail from my place to Ernest Decker's. It will be from the proposed road through Los Alisos Canyon when it is constructed, about four and a half miles, I should say, or five. The green mark, X-13, is about where the house is. I live there; that is on the Kincaid property but not on my
1949 own particular property. My own particular property is about the corner, the southwest corner of 22, and the northeast corner of 27; and then across there (indicating on Exhibit 6). That house is right here, in this corner of the ranch, about 10 feet from the Malibu line. The trail goes across to Ernest Decker's barn,—not straight, but it starts right over the hill and goes pretty near to Ernest Decker's property.
1950 It crosses our property, not entirely; the last quarter is on Decker's; our division fence is about a quarter of a mile from his barn. The only intervening property is either the property of my family or Mr. Decker's property. If this Alisos Canyon road were constructed we could drive our cattle out through this proposed road and down the proposed road. By the proposed road I mean the coast road, what has been described here as the main Malibu road. Starting from my place, upon the map, I would go with

1951 the cattle from the point marked 13-x upon the map, over the trail I have described to Ernest Decker's, being X-11, to this point (indicating) marked in yellow upon the map to its first point of intersection with another yellow line indicating a road, and then on that road. The road which intersects with the road from Ernest Decker's going in a westerly direction over to this proposed road, continuing in a southwesterly direction with the point of intersection with
1952 the proposed road; then down that to the beach. When I got to the beach I could drive our cattle down if they would permit it. I could drive them down the beach if permitted. We could drive them down the Malibu road, I suppose.

The Court: You don't mean that you could drive them down the beach? A. That is what I did mean originally, yes. I did mean that.

The Court: It would not be possible to drive
1953 cattle down the beach and over the cliff. You don't mean that, do you? I want to know just what his idea is, gentlemen, about the means of access. A. They would have to be taken on the road in a great many places.

The Court: How would you get back on to the main Malibu road? A. Well, I don't know how close to the beach the main road goes. If it does not go close to the beach, you could not. Assuming that the proposed road is constructed down Los Alisos Canyon, right straight down

1954 to the beach, ending at the water line, I would drive them on the beach if I could get off of it again at those cliffs. I have gone down through the Malibu Ranch. The last time I went down through it was a year ago last April, I think. Prior to that time we had gone down over the Malibu Ranch. Traveling over the Malibu Ranch I have never taken any of the Rindge property or cattle. I have never broken down any fences.

1955 *Cross-Examination*

By Mr. Anderson:

I am 37. I have been living in that cabin up there for a year; it is a two room cabin. A man named Shuey lives there besides myself, a one-armed man; the hired man on the place. I have lived there continuously. In going out through the Triunfo, the worst place that I find where I have any difficulty with a load is

1956 at Malloy Hill. There are several other places of steep grades. There are two right by Mr. Vaughan's house. Those two are on the south side of the mountain. You encounter the grade there when you come from Triunfo. You have two short, bad grades. The first one, this side of the Vaughan house, the percentage of grade is 20 or 25, maybe 100 feet long. The next one is 15 or 20 per cent. Its length is about half a mile, steep, having 15 to 20 per cent grade, pretty near. There was one about 100 yards

1957 long just to the east of Barney's Knob. The percentage of grade there is about 25 per cent. I don't know the percentage of grade at Malloy Hill, but I should say, 30 or 35 per cent. The three grades I have spoken of are not as difficult as the Malloy Hill.

Q. Now, with proper road construction and grading those could be relieved considerably?

Mr. Vallee: Objected to as incompetent, irrelevant and immaterial; no foundation laid.

1958 The Court: Objection sustained.

Exception No. 17.

Prior to the time I went to live on this property, about a year ago, I was up there about three or four times a year. I always went through the Rindge Ranch, for about 25 years or more. I couldn't say that I have been there on an average of three or four times a year for twenty-five years; for the last ten years I have

1959 been up there on an average of three times, and the five years preceding that, I couldn't say; the five years preceding that I couldn't say; the five years preceding that, I couldn't say. I was always there as much as once a year during the preceding 15 years, to exceed that. It is not a fact that when I went up there I went up for hunting purposes only. We always had stock in the pasture, in Decker's place. We did not have that 2200 acres place the preceding ten

1960 years. We got it in 1905. Since then we have not used it for any purposes excepting stock, but just to raise hay, I mean cultivated hay, barley, on the 2200 acres, possibly. We used it entirely on the ranch for that small herd of stock we have, and never have attempted to take it out to the market. We have never taken our stock out to market in any other way than over the Rindge Ranch—never have tried;
1961 never had occasion to; we only have about 24 head up there now, just cows. No other brothers of the Kincaid family reside on that place. My brother and his wife did a year and a half; I think it was in 1905 or 1906. I had another brother that resided there for—I don't know how long—it might have been a year. This brother I refer to was a post-man in Los Angeles. His family resided there while he was performing his duties, his wife and the boy. I
1962 think part of the fence was built two years ago and the rest was built this last year. It is just the line of the ranch; it is not a cultivated field. The character of the shrubbery and feed, on one side, is about the same on one side as the other, no difference between the general territory, not cultivated on one side or the other. We have never built any more than a line fence, excepting some cross fences. It fully enclosed our place, where we farm. From the Malibu ranch that is half a mile. That is about 20 or

1963 25 acres. There is a fence entirely around that, three barbed wire and buckhorn posts. That is the only enclosure, actual enclosure in all that 2200 acres, excepting cross fences up around the house. That is the only thing that is actually enclosed on all sides. This line fence that I speak of, I guess, is about five or six miles. There is nothing to prevent cattle going around either end of it. It is between our
1964 property and the Rindge property and the west side of the place is fenced and the north side of the place is fenced. When I said five miles, I meant all three sides. On the Malibu side I think about a mile. On the west side I should guess the line of fences there is over two miles. On the north side, a mile and a half or two miles. There is nothing to prevent the Malibu cattle going around on the east side and entering our premises. I built part of that fence
1965 two years ago and part last year. I got wire up there for it on a boat; took it up to Trancas canyon—or, no; I took it up—I won't say whether it is Trancas or Ramirez, two years ago; took it all up at once and carried it over the mountains in a wagon. From the beach, the road that we originally went down was on the west side of the Trancas Canyon. That is some distance from what we call Los Alisos. In going from my place to the Triunfo post-office I have never used a vehicle all the way. I got

1966 my vehicle over at Ernest Decker's. I have a buggy there and a cart at present. Not always for these 30 or 40 trips; sometimes I went in his spring wagon. I have never used an automobile there at all. Last year on that 20 or 25 acres we got about 15 tons of hay; I meant, this year. That land has been cultivated more or less ever since we had the place, since 1905 or 1906. Our land was taken up some of it timber and stone and some homestead. The place
1967 which I am living at was a homestead. As to the 2200 acres, I do not know how much of that was timber and stone claim and how much was homestead.

Redirect-Examination

By Mr. Vallee:

Q. Why haven't you more stock on your place?

Mr. Anderson: We object to that question
1968 as speculative, because the place where the stock is is not necessarily his place, but that 2200 acres, and he would be speaking for all the joint owners.

The Court: Overruled.

(Exception No. 18.)

A. As soon as the road was closed, I quit taking stock in. As soon as we could not go through the Malibu Ranch any more, I quit taking stock in.

(Continuing.) I quit using the Malibu road

1969 in April of last year because they locked the gates.

Recross-Examination

By Mr. Anderson:

I have never taken any stock out through the Russell ranch way. Before the road was closed we used to have anywhere from 30 to 40. I think there was about 47 head there once. That is the most we have ever had. We never have taken it down the Little Alisos Canyon. We
1970 took some down the Decker road or the Encinal a time or two, but our usual way of taking it out was down through the Trancas Canyon.

JACOB H. RICHTER,

a witness called in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

I live in Township 1 South and 20 West,
1971 Section 10, Ventura county. The name of the place at which I live is called Yerba Buena school district.

Q. Will you point out upon the map (Exhibit 6), about where you live? I will first explain the map a little to you so you will comprehend it better. This is a photographic reproduction of the United States Geographical Map. The heavy purple line indicates the northern, eastern and western boundaries of the Malibu Ranch

6 6 1

property, except that the other purple places on the map indicate property that is owned by the Rindges, by which I mean the Rindge Company or May K. Rindge. The heavy green line indicates the boundary between Los Angeles county, lying to the east of that line, and Ventura county to the west. The yellow lines were placed upon the map by a witness in the case, Mr. Scotton, and indicate roads, according to his testimony. The green, irregular shaped mark upon the map indicates the Mathieson Lake. Where I am now pointing is the Ventura county line, and this is Russell Valley; and it is in testimony here that the territory on either side of the red circles just west of the Ventura county line, is the Yerba Buena settlement. With that understanding, will you please point out about where your property is located? A. I think I can. I live right in the center on this line, Section 10. I wish to announce that that location ain't on the map. I will tell you where I live . I have to tell you the other first, because it ain't there.

Mr. Burnell: Mr. Scotton is very familiar with this map and will show us where section 10 is.

(Mr. Scotton indicates on map.)

A. I live right here. My place is right near the center line of section 10.

The Court: Suppose we have that marked.

1975 (Mr. Scotton marks on map.)

Mr. Burnell: May I ask Mr. Scotton a question? The mark you have put on the map indicates what?

Mr. Scotton: The green cross that I have placed near the center of section 10, is in the west one-half of the east one-half of section 10. I have marked that with No. 14, Mr. Richter owning that land.

To Mr. Burnell: That is about where I live.

1976 Q. How long have you lived in that district?

Mr. Anderson: Now, if the court please, I object to that on the grounds that have already been stated; and, as I understand it, counsel have agreed that they will connect up or make a proper connection or foundation before they undertake to have any testimony from these Yerba Buena witnesses concerning their surroundings.

1977 The Court: He is laying the foundation now.

Mr. Anderson: Very well.

Mr. Burnell: We are laying the foundation now. Read the question.

Mr. Anderson: If it is a foundation question I have no objection to it.

(Last question read.)

A. Why, it is eight years in April. I own the property I live on, 160 acres.

Q. Now, I will point out to you this map, Defendant's Exhibit 6, the road that is shown

1978 as running from the eastern boundary of the Malibu ranch, by various curves, and near the coast, and ending at the Ventura county line. You see where it ends? A. Yes sir.

Q. Now I will ask you if there is any road by which you can get from your place to the Ventura county line at the place where the proposed Malibu road terminates

Mr. Anderson: We object to that unless the question is so qualified as to include the pas-

1979 sage over private property.

The Court: Objection overruled. (Read the question.)

The Witness: You said private property.

Mr. Burnell: No, that was interpolated by Mr. Anderson. My question is whether there is any road by which you can get from your property to the Ventura county line at the point where the proposed road terminates.

(Exception No. 19.)

1980 A. Over the Mondell road. I have been familiar with that road since I was there.

Q. Eight years. During that time has it been open to travel?

Mr. Anderson: We object to that, if the court please, on the ground that in this case they cannot prove public roads by user.

The Court: Objection overruled.

(Exception No. 20.)

1981 A. It was used up to the time that they closed the Malibu road; the Malibu people. That was over a year ago. Prior to that time and all of the time I have been living in the Yerba Buena district, the Mondell road has at all times been an open traveled road, with a wagon, used by myself and others, the whole settlement.

Q. Has anyone, prior to the closing of the Rindge road, or before the Rindge people closed
1982 it, ever prevented you or others, so far as you know, from using that road?

Mr. Anderson: We object to that. It is an attempt to prove a public road by user.

(Exception No. 21.)

The Court: Objection overruled.

A. Well, they asked us not to use it.

(Continuing). I could not state who they were but they were people on the Malibu Ranch. Apart from that no one ever prevented me from
1983 using the Mondell road. The road the Rindge people asked me not to use was the one on the Rindge Ranch. I don't know anything about whether it is a dedicated road or not; I don't know anything about that road; Mondell built it, that is all I know. The Rindge people closed the road over a year ago, but I don't know what date.

Q. In what way did they close it?

Mr. Anderson: (Interrupting). I don't

1984 know that there is any dispute. It seems to me unnecessary to go into that. It is stipulated that about that time—

Mr. Burnell: If it will be stipulated that the Rindge people about the 1st of July placed a gate across the road to the Ventura county line—

Mr. Anderson: No, we fenced it further west.

1985 Mr. Burnell: There is no need to go into that, then. You say you fenced it further west?

Mr. Anderson: Yes. We will stipulate that about the 1st of July, 1917, the Rindge interests entirely closed their ranch to users by any persons excepting with permission and that they have kept it closed as well as they possibly could since.

Mr. Vallee: Will you further stipulate that prior to the time they closed it, that the people

1986 in the various canyons had been using the road?

Mr. Anderson: No, those circumstances under which they were using it should be put in evidence, if there is any merit to it. As a matter of fact, for 10 years there was an injunction which kept the road open.

The Court: That stipulation covers the fact which you sought to elicit then, Mr. Burnell.

Mr. Anderson: Certainly—that the entire Rindge property has been closed to the public travel.

1987 The Court: And particularly that on the Ventura county line.

Mr. Anderson: All of it.

Mr. Burnell: We are not prepared to stipulate as to the closing of the road any further than the Ventura county line.

The Court: That is the only point under consideration now anyway. The stipulation goes to that.

1988 Mr. Anderson: It goes to that, and our contention is that we—

The Court: Do you insist on the stipulation as stated?

Mr. Anderson: I am willing to stipulate that we did close it about that point, but I don't wish to be bound by that, that we did not close it anywhere else.

Mr. Burnell. And by that point we mean the Ventura county line.

1989 (Continuing). Prior to the time of the closing of the road, I went to and from my place in Yerba Buena, coming to Santa Monica and Los Angeles, following the old beach road, through the Rindge property. I couldn't say how many times I have gone through the Rindge property in the last eight years, maybe a hundred or more times, I would think. On none of those occasions did I kill any of the Rindge cattle or any cattle on the Malibu Ranch, or any sheep or hogs. I did not steal any of the Rindge

1990 property. I did not shoot any of the employes or anybody else. I don't carry a gun either. I never in any way interferred with or harmed any property on the Malibu Ranch. Mrs. Rindge has never given me a meal; she has never made my bed with her own hands.

Q. Now, since the Malibu Ranch was closed to you, in what way is it possible for you to get in and out of your place?

Mr. Anderson: We object to that on the
1991 ground that the foundation has not been laid. There is no proof of any public road through the Rindge Ranch or public access to any road that is contemplated, so far as this Yerba Buena settlement is concerned, and we think it is encumbering the record until it is established.

Mr. Burnell: There are two answers I want to make briefly. The first is, that we think we have laid the foundation by showing that for a period of 7 or 8 years there was an open, trav-
1992 eled road which he used and others used without interference, and that at least raises the presumption—

The Court: (Interrupting). I think you are right. I don't want to hear any argument on it.

The Court: Objection overruled.

(Exception No. 22.)

A. Well, if the court will protect me, I will tell you.

1993 The Court: Certainly we will protect you.

A. We steal out across the other ranch. We have a legal notice not to cross that ranch, but I cross it anyway, the Guadalasca ranch. The Gudadlasca ranch runs up to Twin Peaks. This (on the map, Exhibit 6) is the mouth of Sycamore Canyon, but it is wrong. The line goes on this side of Sycamore Canyon. This is Twin Peaks, on the Boney Ridge (pointing at a point shown as a little ways west of what the map
1994 describes as Sycamore Canyon). The second point above is marked Sycamore Canyon (indicating.)

Mr. Burnell: Now, just point where the Guadalasca ranch is. A. There is the other corner (indicating on map).

Mr. Burnell: The other corner is indicated as the junction of two heavy lines, one of which goes in a southwesterly direction just above the
1995 words "Boney Mountain" there joining the line which runs from the state highway shown on the map just to the east of the elevation figure 1170 in a southerly direction to about opposite the letter "G" in the word "Guadalasca," and the third line meeting at that junction point, running from the junction in a southwesterly direction to the Pacific ocean at the mouth of Sycamore Canyon.

Mr. Anderson: To clear the record, we will

1996 withdraw the objection. I misunderstood the witness.

The Court: Now, what road were you describing where you say you steal out over, you used that expression and so will I. A. We steal through the brush. We do not steal over a road. We come out on top of the Conejo grade. Here is Round mountain; I suppose that is the road, I don't know, but we come out on Mr. Borchard's land. That road leads to Ox-
1997 nard. It goes to the state highway. We go over a short piece to the state highway and then along the state highway to Oxnard, strike the state highway east of Camarillo, and then to Oxnard. You can go that way or the other way, and the old road, down the Old Camarillo grade, you can go to Hueneme on the same road.

Q. Now I will ask you if there is another road or trail or way by which you can get out
1998 of and into your property since this ranch has been closed other than stealing out at night through the Guadalasca ranch

Mr. Anderson: Our general objection goes to all of that, of course.

The Court: Objection overruled.

(Exception No. 23.)

A. There is a foot path from a place down about the Mondell road, about the Mondell place, and from there over to Triunfo Pass and down over the Pass and when you get down to the

1999 Johnson place there is an undedicated road we get through, we get through there, and with permission go over the Russell ranch and to Triunfo post-office. It is pretty hard for me to point that out on the map, but I will try. It will be almost an impossible thing. From my place marked X-14, you go to section 12 and from there you go to the old Triunfo pass, along in here somewhere.

2000 Q. Do you think that this road line which Mr. Scotton put on as indicating the trail is the trail you speak of? A. That is Triunfo pass. This is Sandstone Peak, to the left of the trail.

Q. As shown on the map. A. Yes sir. There is probably where the Johnson place is (indicating on map).

Q. Indicating a point on the map west of the Ventura county line below the elevation figure 1728? A. Yes sir. Then we get out

2001 onto this road (indicating).

Q. Indicating a yellow line shown on the map from the figures a little below 1728, in a generally northern direction, to intersection with the road which is marked on the map, "Long Grade Canyon," striking that road at a point northwest from Mathieson Lake. A. We pass that. We walk right around that. Then we go that way, over here (indicating a road leading in an easterly direction, past Mathieson Lake through Russell Valley to the state highway).

2002 The post-office, Triunfo, is right in there; then we turn off through the Russell ranch; you turn off from the Russell place to Triunfo post-office, by permission. That trail I have described is very rough until you get over to Johnson's, and after that you can drive a team. You can not drive a team from my place over the trail. You can hardly lead a horse; you can hardly get over yourself in bad weather. I think the heaviest load you can take over on horseback I
2003 have heard of was only 200 lbs. I only heard of that, though. Not me—never took anything over on a horse. I never tried it. I didn't want to kill the horse. I would just as soon kill myself, but not the horse. I know how many people live in this Yerba Buena settlement, there was exactly 42 when I left the other day. There is a school there. There was exactly eleven children in the school. I counted them the
2004 morning I came. Living in that settlement before the Rindge people closed the Malibu Ranch, there was 82 when they closed the gate; in the school at that time there was 21. There was a post-office up there but it was closed on account of closing the road and getting nothing in. We couldn't get nothing in, that is, parcels post.

Mr. Anderson: I move that that statement of the witness be stricken out, that it was closed because of the closing of the road.

The Court: How do you know it was closed

2005 on that account? A. Because they could not get nothing in. Whenever they had anything too heavy to haul it in they hauled it in, but they did not haul it in afterwards; and we had no road; and it was on account of no road, whether that road or any other road, because of no road we could not keep the post-office up.

(Exception No. 24.)

The Court: Motion denied. How long after the road was closed was the post-office closed?
2006 A. I couldn't say. I don't know for sure as to that at all. I know the post-office was closed because the road was closed, because we had the trouble and that was all. It gave us so much trouble that we could not get nothing in there. That was the only reason. We all took turns to go after the mail. The post-office was one established by the government in this district, and a post-mistress appointed by the general author-
2007 ity. Mrs. Mondell was the post-mistress. Since the road was closed, or since the fence has been placed upon on the Malibu Ranch at the county line, I have not driven down to the line at all on this Mondell road. I have not been on the road at all; we were ordered by the sheriff not to go on the ranch, and we didn't go there again.

The Court: The Mondell road was on the Rindge Ranch property? A. Well, a little east of it. Let us see: From the road up to the line —of course I am not an authority on their line.

2008 It would be probably a quarter of a mile, pretty close. I mean a quarter of a mile of this Mondell road was on the Rindge property. The road from my place to the county line, I should judge, could not be under six miles. It could not be under that. That is, the road as it ran. I don't mean the county line from my place, because that is a good deal nearer. All but not to exceed half a mile of that road was off the Rindge property. I do not go down on that road
2009 at all since the Rindge property was closed; there is no reason to go that way. I have crossed it. I didn't follow it. Mr. Hoffman lives right against that line, and I went down there on business, but I didn't go with a team; I walked. He does not live on this old Mondell road; he lives off of the Mondell road, this way. In order to get from his place to my place it is necessary to go on the Mondell road. Since
2010 the Rindge property was closed to traffic, I think I only went down there once, and that was to see his land to be a witness for him. I looked his land over. I went down there on business and in order to get there I used the Mondell road; I had to use a piece of it. There are other neighbors living between my place and the Hoffman place, in close proximity to the road; there is quite a number. I have visited them since the road was closed. To get down to visit their places, I went down the Mondell road, or went

2011 down the path that goes to the Mondell road. We have a road that joins the Mondell path and we can go over that, or go across a cross path. Mr. Fitzpatrick lives between me and them on the road, and Mr. Kolklassen, and to go to Mr. Parks', or over to the other settlement there to Mr. Decker's settlement, you have to go over the Mondell road, part of it, but we can branch off and go over across the head of the Sequit. That Mondell road has been open since the
2012 Rindge road was closed, open right along, down to the Malibu Ranch, the Rindge property; not to the Ventura county line.

The Court: I understand. He said a quarter of a mile of it was on the Rindge property.

By Mr. Burnell:

I have got about forty acres under cultivation; I raised peaches, plums, apples, pears, apricots, several kinds of plums—I can't name them;
2013 barley, oats, wheat, corn—more than one kind of corn—cabbage, rutabagas, tomatoes, lettuce, onions, beans. I raised the pink beans for market, but the Kentucky Wonder for consumption there. Before the Rindge people kept me from going out by way of the Malibu Ranch, I took my produce out down the old road, down the beach, through the Malibu Ranch. I took my produce to different places. I sold it wherever I could, as a rule. I sold some of it to Mr. Albert Cohn, the grocer, here in Los Angeles.

That is the nearest to here. I sold some in Sawtelle. Since the Rindge Ranch has been closed to me, we have taken very nearly all of our produce out, some of it to Los Angeles, but we had to make the turn around the horn there. I get it out just like I told you—through the brush and then put it on a wagon over on the highway and go down to Los Angeles with it. I get it through the brush on a horse's back. We took 160 pounds on a horse. It ruined the horses. That is the only method I have now of getting my crops out, that I know of. I raised this year something over 5 tons of pink beans. I got out 40 sacks. They averaged 97 pounds and some ounces to a sack. I got them out the same way. I didn't get them out; I had to get someone else to get them out, and they went out, stealing across the Guadalasca ranch at any time, day or night. If you go at any time you are stealing across. And that is how I took the beans out, the remainder are in the warehouse on my place, waiting to get out. There is 75 bushels of corn there, too. Besides this part of my ranch that is now in cultivation there is 40 acres more to clear up to cultivate that is good land, that can be cultivated. I am in the farming business; that is all we do. I didn't farm steady. I farmed on the side, and I worked eight years for Ed C. Gird in this county, but I farmed on the side all the while, but still I drew

2017 wages from him at the same time. I have been connected with the business of farming over 25 years. I have got exactly seven acres in fruit trees, bearing trees, all but about maybe 20; they are young. I have not gotten any of my fruit out to market this year; impossible to do that. That stuff won't carry. Before the Rindge people kept me from going through the ranch I did not get any fruit out. It would be almost an impossibility to take it over that road
2018 and bring it down here and sell it. It would be all bruised up. Another thing, I dried some of it that we didn't use. The trees are young and didn't bear as much as they do now. Now, the fruit virtually rotted on me. I couldn't help it. I gave away all I could. I have something like 800 quarts done up.

By the Court:

These 40 people that I say are up there now,
2019 some goes out to work for their living; their land won't support them, they ain't got enough cleaned, you see. But some are making their living off their land. There ain't any that comes up there for pleasure in these that I mentioned. Those are people that are living there and their children, and going to school there and make their living off of agriculture, and going out on the threshers, or something of that kind in the fall. I have two sons out on a thresher now.

By Mr. Burnell: I am a married man. My

2020 wife lives up there with me. There has been occasion for her to go out in the last year or so. I carried her out to the doctor about two months ago. Let's see; it is a little more than two months ago. She came back about the first of September. She was gone six weeks. Over the rock places we had to have her walk, and over the smooth places we rode her on a pony over to the Triunfo post-office, and then took a stage and came down to Sawtelle to the doctor.

2021 Q. What was her physical condition at the time she went out, as to being sick or well?

Mr. Newby: We object to that as irrelevant and immaterial.

The Court: Overruled.

(Exception No. 25.)

A. A varicose vein bursted in her leg.

(Continuing). I was taking her out to have it burned to stop the bleeding and have it healed

2022 up—for medical treatment. I could have taken her out the same way we did before, but there wasn't any purpose in that. If we went that way, we had no place to go; if we came this way, we had a place to go. I took her to her own home in Sawtelle. She has a place there and keeps it. It is something like 25 miles to Oxnard from my house. From my place to Santa Monica by way of the Mondell road and through the Malibu Ranch, we figured it 32 miles. That is what we figured it. Of course, we didn't meas-

2023 ure it. I have never been to Hueneme. I have been near, within 5 or 6 miles or so. Before the Rindge Ranch was closed, when I could get through by way of the Mondell road and the Malibu Ranch, we bought our provisions and supplies, and always, for 25 or 30 years have been buying of Albert Cohn here, but we have stopped now and buy them over to Murphy & Wells, in Oxnard. Since the road has been closed, my business has gone to Ventura county.
2024 We took it over there; before we always came here. To go from my place to Santa Monica before I was cut out of the Rindge ranch, it seldom took us less than a day. From my place to Oxnard at the present time, going through the Guadalasca ranch, leading a horse. I have one horse that it takes about three men and a boy to make that horse go at all, and it takes two or three days to go from there, but if I go
2025 alone I can walk over to Oxnard and come home in a day myself. When I speak about taking a day to go to Santa Monica by way of the Rindge Ranch, I mean driving or walking. That meant one way. Coming back I was always two days. The first load I took in I was 14 days—exactly 14 days. I went then the same way we always went, right along the beach. At that time in places I guess there was a road—an inland road. You know we crossed in some places—on Point Dume we crossed over the land; we didn't

2026 follow the water there, because you cannot. The time it took me 14 days to make the trip I surely went along the beach. We had one 2-horse pony team and one single team and one 4-horse team, pulling three vehicles.

By the Court:

I could not follow the water around Point Dume as the water runs up on the point, and it is 20 or 30 feet deep at times, and splashes up on the point. There is no way to go. There
2027 is no beach there; it is solid rock. In my opinion it would surely be impossible to go down the beach, from any of these canyons up near the Ventura county line, to Santa Monica. It was a matter of physical impossibility for me to get by the cliff there at Point Dume; I couldn't get by.

The Court: Do you think any human being could get by? A. It would depend upon the
2028 man. Not me—I couldn't do it. If a man was herding a drove of cows down there, he could not get by Point Dume there, on the water side I don't think, unless the water went away out. I never seen it so.

Mr. Anderson: I don't think there is a question but that Point Dume is impassable on foot, horseback or otherwise, except in a boat.

Mr. Burnell: Yes; I don't think there is any question about that.

(Continuing). I have cattle on my ranch; I

2029 have seven head. There are cattle on the adjoining ranches. I couldn't state how many, because sometimes there is as high as 500, then there is 300 and so on. Sometimes 50 or 60 come in a bunch, sometimes 5 or 10. Hobson Brothers, my neighbors, have the largest number of cattle. I suppose they have thousands; I don't know how many they have got; they have got several hundred anyway. This land does not adjoin mine, but the cattle comes over
2030 just the same. There is nothing to prevent his cattle from coming up to my line, not in places; in places there is. I have a fence along the line of my ranch. That fence keeps Hobson's cattle from coming onto my land where it is up, but they go around the end of it and come in. They have not come through this season. It is two wires on buckhorn and lilacs.

Q. I will ask you, Mr. Richter, from your experience in ranching, what sort of a fence is
2031 suitable to keep cattle turned away from the crops on cultivated land

Mr. Anderson: We object to that on the ground that it has not been shown that the witness is qualified to testify to conditions similar to those existing on the Malibu Ranch.

The Court: I think I will let him answer that. Overruled.

(Exception No. 26.)

2032 A. All but outlaws I guess you could turn with a four-wire fence, but outlaws can't be turned. I don't think you could turn them short of a gun.

By the Court:

I mean by outlaws cattle that are wild and untamed. I found those on a range; they have to kill those to make them mind. That is all there is to that.

2033 By Mr. Burnell: Of these outlaw cattle I have seen three to my knowledge. The total number of all cattle that I have seen up there would be pretty hard to say; I think they had 1500 at one time in the big canyon, Sycamore Canyon, so they said. Those three outlaws were up in that country. Since I have been up there I have seen over a thousand and only three outlaws to my knowledge.

2034 Q. Are you familiar with the sort of land that lies on the Rindge Ranch? A. Along what I have passed over, I never followed around any, I didn't have time.

Cross-Examination

By Mr. Anderson:

I did not say I had been on the ranch but I had not been over the ranch since the sheriff told me that I could not go over that ranch. I said that he told us to cut out the rough stuff and not go on the ranch. I have not been there since. It wasn't about that time that the Rindge

2035 Company brought a lawsuit against me and Mr. Fitzpatrick and others; it was long after; told us to cut out the rough stuff and not go on the ranch. I remember when he told it, I will tell you that so that you can know and won't be mistaken. It was when I went to visit Mrs. Decker, it was about the time they surveyed the road down the canyon. I don't recall the date. Quite a while before that I had been over the ranch; I couldn't say how long. I remember
2036 that I was the defendant in the case of the Rindge Company against myself, Fitzpatrick and others. I was one of a party that went through the ranch by force, but the man said that I drove a team through. I did not. I walked. I was with the party—the party at that time undertook to shoot the locks off the gates with rifles. Well, let's see. I believe one shot was fired; I wouldn't swear to that. They broke
2037 through a number of gates, tore them off the hinges, in some instances, and broke the locks. They were locked with chains and padlocks, one of them were; a number of them were not; they were open. I went down through the roads recently constructed by the Rindge people, through their fences, but they gave me permission to go through that road. Irrespective of the order that I had giving me permission, I found the gates locked. Some of the party broke the locks and forced their way through. That occurred

2038 twice; and the result was an action that was brought against Fitzpatrick, myself and others and I was served with a complaint and summons in that action.

Q. And a judgment was entered restraining you from doing those acts and preventing you from crossing the ranch? A. No, sir, I didn't cross it.

Afternoon Session, 2 o'clock P. M.

2039 (Stipulated jury present.)

Mr. Burnell: Now, if Your Honor please, and by the courtesy of Mr. Anderson, we want to put on a witness who lives quite a distance out of town and who is an elderly man.

Mr. Anderson: Certainly.

A. J. RUSSELL,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

2040 By Mr. Burnell:

I live on the Conejo ranch in Ventura county. I don't think that ranch is known by any other name. There is different post-offices there, Triunfo post-office is the post-office I use.

Q. Now, I call your attention to a large map that is known as Defendant's Exhibit No. 6, and which is a reproduction, a photographic reproduction on a large scale, of one of the United States Geological Survey Maps, the property

2041 known as the Malibu Ranch is indicated on this map as lying within the broad purple mark, that is to say the broad purple mark indicating the boundaries of the Malibu Ranch, on all sides, excepting the ocean. The other purple markings on the map indicate property that is owned by Mrs. Rindge or by the Rindge Company, and which is outside of the Malibu proper. The yellow lines were put on by a witness for the
2042 defendants, who testified that they represent roads. The Russell Valley is as shown on the map, where the words "Russell Valley" or Triunfo post-office is area which I am now pointing to, and the broad black line is the line across the map here, that is the state highway, leading up to Ventura, indicated in the words in red "State Highway." The heavy green line which bears the legend, Ventura County Boundary or Ventura County, Los Angeles county boundary,
2043 represents the westerly line between the two counties, between the county of Los Angeles and county of Ventura, the exact boundary being indicated by the heavy dash line, the black dash line. Now, with that explanation, Mr. Russell, I will ask you to state where the ranch is that you speak of, as located on this map. A. Why, where it speaks of Russell Valley. That ranch is sometimes known as the Russell ranch; different people call it the Russell ranch. I am the Russell for whom the ranch was named. My

2044 children and myself own it now; formerly I owned the whole ranch. I at present reside on the ranch.

Q. Now I call your attention to what are indicated on the map, Defendant's Exhibit 6, as roads, running through Russell ranch, one which you will notice leads from Triunfo post-office on the Ventura county highway, in a generally southerly and southeasterly direction—

2045 A. Yes, sir.

Q. —to a place called Cornell, as shown on the map, with various roads leading from it. The other road runs to the east of the road which I have just mentioned, adjoining a third road which leads from the point on the Ventura state highway, commencing on the state highway just above where the letter "Y" is in the word "Valley" on the map, and running in a generally westerly direction. Are the roads or

2046 portions of roads which I indicated, they run through the Russell ranch? A. Yes, sir.

Q. The third road is the one leading from the west of the one from Triunfo post-office, and the south, and the one that comes into the road leading west, in between Mathieson Lake, indicated by the green spot on the map, and Russell Valley? A. There is one or two roads; the one that goes close to Cornell, and the one that goes up here (indicating on map). The one that comes from Mathieson ranch is the one that

2047 goes to Cornell, and the other one is the one from Triunfo; they both start from Triunfo, from the post-office. There used to be another road there. There is no traveled road running from the Ventura state highway, beginning about where the "Y" is in the word "Valley," running in a westerly direction, and joining the intersecting road between Triunfo and Cornell. There is a gate there. The two roads are the
2048 road from Triunfo to Cornell and the road from Triunfo to the Mathieson ranch to the lake. That would be going south of Triunfo to the junction of the road leading westerly and then on to this point, and also the road leading southerly going across the Ventura county line; they are called private roads; they are all through the Russell ranch, except the state highway. The roads shown in yellow, to which you have called my attention, are private roads. We have
2049 gates across them at different places. We permit people to go through there. The products raised on the Russell ranch are alfalfa, grain and some beans; and cattle. I think about seven or eight hundred on that ranch; somewhere along there; a thousand sometimes. I know some of the people whom it has been testified lives up in what is referred to here as the Decker plateau. I know Ernest Decker. I know Charlie Decker and Mrs. Decker, and Mr. Vaughn. I don't know Mr. Parks. I am not very well ac-

2050 quainted. The people whom I know that live in that part of the country known as the Decker plateau pass through our ranch frequently. I have seven or eight hundred cattle on the ranch. We fenced the portion of the ranch on which the cattle grazed from the portion that is cultivated. We have under cultivation I suppose 1500 acres. I have been in the cattle and ranching business since 1877. I have been interested in Russell ranch since 1881. The kind of fenc-
2051 ing I use on our ranch the Russell ranch, between the cultivated land and the land where the cattle graze is the 26—what they call the hog wire, and from two to three barbed wires on top. I use the 26 inches high of the hog wire and from two to three barbed wires, strands. We use mostly oak posts; some pickets. The pickets are this mountain redwood that comes from those hills. Where we use posts we use
2052 mostly oak. I couldn't tell exactly how high the fence is. Five feet makes a good cattle fence.

Q. You get the wood for your posts and pickets in the mountain country there, do you?

Mr. Anderson: I object to that as immaterial, if the court please.

The Court: Overruled.

(Exception No. 27.)

A. We get the oak posts on our place.

(Continuing). The posts that I call redwood

2053 come from those mountains, different ones. That redwood is not the same as the redwood that comes from the California redwood trees. Some people call it mountain mahogany. It is very red. It is small; it don't grow large. It is in the rough. The posts are split. I have used posts of California redwood—that is, the wood of the tree known as the redwood tree. I have built quite a lot of fence made out of the redwood from the big trees. I do not use this
2054 hog wire for cattle. We do where the hogs are. Where we have cattle and not hogs, four wires makes a good cattle fence. I used that, three and four wires. A fence that is composed of either three strands of wire or four strands of wire, and the same kind of posts I have been describing, that kind of fence turns our cattle and keeps them out of the cultivated land. I have not been over the Malibu Ranch, the Rindge Ranch
2055 very much. I have been across it once or twice. I did not have any sheep on the Russell ranch. We have had sheep there; always had a herder with the sheep, so we did not necessarily use a fence. I am familiar with the raising of sheep. I am acquainted with the general custom of raising sheep, among the sheep men in California generally.

Q. I will ask you if it is customary in the raising of sheep to keep a herder with them at all times. A. It is.

2056 Mr. Anderson: I move to strike out the answer until I can object. I object to that on the ground that it is incompetent, irrelevant and immaterial whether there may or not not have been a custom as to the method of keeping herders. No one is compelled to keep herders.

The Court: Objection overruled.

(Exception No. 28.)

Cross-Examination

2057 By Mr. Newby:

Even where a ranch may have sheep, and employ a herder, fences are not also necessary for sheep where you have a herder. If you had a hog ranch it is not customary to have a keeper with them; it is more to protect the sheep from wild animals; you have to have a herder with the sheep. I never saw anybody that did not. If they did not have quite a herd, I suppose they would not need a herder. I don't know. If any-
2058 body had a few sheep it would not pay to have a herder. We generally have 1500 to 2000 or 2500. A thousand sheep would have to have a herder with them. I hardly think it would be economical to have a herder for less than a thousand; if a man had 500 he would have to protect them from wild animals, and then it would be necessary to have a herder. The road known as the Cornell road was there when I bought the ranch. It has been used as a road since '81, at times, when the canyon was not

2059 washed out. There was times when they could not go through it. But there has been no interruption except from cloud bursts and physical causes of that kind that I know of. When it gets to Cornell they can go up a hill there, a very steep hill there into the mountains. That is the Nigger Hill road. I have been over that road to the south of Cornell. I went over it with a party one time in a spring wagon, 25 years ago.
2060 I think I had six horses pulling it over. I have traveled over the road from Triunfo after it intersects the Ventura county line, going to the west towards Ventura. On that road I have traveled to go to Ventura that way, to all of the Ventura towns, Oxnard and Hueneme. That is a pretty fair road, I guess. That has been traveled as a highway more or less ever since I have been there, that is, since '81. These gates that I speak of, are between Triunfo (Mr. New-
2061 by indicates on map) and the intersection of the Ventura county line; I believe there is gates on the other line too, that goes to Ventura; the one to the west. Not all of those gates are on the Russell ranch. They are on the Mathieson ranch, and other people that own land up there. I don't think those gates are locked, and any person desiring to pass over that road, I think, may do so by opening the gates and going through them. That has been the case ever since I have been there. I have known some of the

gates to be locked. I have known people to lock the gates at different times; three or four years ago the gates were locked; I think Mathieson ordered them locked, and then I think they were afterwards opened. I think it maybe was for about 2 years, and that was about 3 years ago. I think they are open now. I keep up the road on my ranch and I suppose Mathieson does on his. The county authorities do not spend any money on either one of the roads. I believe at the west end the county does. I believe it is a county road to the top of the hill coming Hueneme way or Ventura way, or down to the foot of the hill; I don't know which. Where I indicate as the foot of the hill is right through the Mathieson ranch going west. You see "Potrero." You go through that and come to a hill that tips down into the valley; just to the west of the word "Potrero," about two miles west.

By the Court:

Through my property I keep the road up.

By Mr. Newby:

Since I have been living in that country there has been no distinction with reference to persons desiring to travel over these two roads that I have described; not that I know of. The general public has been permitted to go over those two roads. I have not been up that Decker road

since the county done any work on it; I was up that road I guess six or seven years ago.

JACOB H. RICHTER,

recalled.

Cross-Eamination (Resumed)

By Mr. Anderson:

At the time that these gates were broken through, when I went in that party, I had permission to go through that gate that was broke. They told me not to go through the hog road any more but to go over the bridge. That was a long party; some were a mile ahead of the others. When I got there, the gate was open. There was a gate standing beside the road, but there was nobody touched it that I saw. I seen them open, and I saw them open the gates, but whether they tore the gates or not, I don't know. I was not in front, I was behind. The only gate that I claim I had permission to go through was the Lachusa gate.

Q. Isn't it a fact that prior to that time the road that you had been using, along the beach, had been pretty well washed out and had become practically impassable, and that the Rindge people had built new roads above them, on the hard dirt and fenced them and put gates on them and locked the gates? A. Well, in places, they built over the same place where the road was before and in places they made a new road. There was places we could not get through,

2068 along the ocean, and we went over the new road. All the gates excepting the Lachusa gate were down toward town, were on the new roads, recently constructed by the Rindge people or worked over. With reference to the gates, where the gates were erected and locked, those were new roads that had been recently constructed by the Rindge Company or reworked roads. I went to this particular section where
2069 I am now living and settled there in April, 1910. I believe I went up in the Yerba Buena section in 1892; just went up there; I did not live there. I don't believe I went there at all between 1902 and 1910; I went up as far as the Malibu gate is all. That was in 1892. I had been up as far as Malibu gate but not beyond that; along the beach like other people do. When I went there in 1910 the other settlers in there at that time were Mr. Emery LaSac; Henry Mondell; Jesus
2070 Serrano; I don't believe I can remember any more; I believe all the others came in since. The Mondell road I have not used since the injunction, with the wagon. I have walked across. I have not walked down on the ranch since Mr. Zehner told me not to; since this injunction when I and Mr. Fitzpatrick were a party to that injunction, I never drove on the ranch or set foot on it so far as I know. I did not use the road since. I can locate the point on the map where the road comes onto the ranch or near it.

2071 Q. I will call your attention to the fact that this purple line, and the straight black line to the west of the purple line, is the ranch boundary, that is the ranch boundary and that is the Ventura county line (indicating)? A. This straight patch here?

Q. Yes. This piece of purple is the rest of the ranch property that goes up into Yerba Buena. Now the point which I am indicating
2072 below the "L" in Little Sycamore, the purple point is where the ranch property ends. Now, with that in mind can you tell where the Mondell road comes and Little Sycamore, being what is called Yerba Buena Canyon? A. That is at a point right along here, it passes that corner, within a hundred feet of that corner.

Q. Then, as I understand it, it commences at a point just where the purple comes in contact with the beach? A. There is another road
2073 that comes in that way (indicating).

Q. What other road was that? A. That was what was considered the county road.

Q. The county road did not go across the Ventura county line, did it? A. No sir, that way (indicating). There was a road there across the Ventura county line on the Rindge property which I considered a county road; the Mondell road connected with that. The Mondell road, where it reaches the county road, from the Ventura county line, was, I should think a

2074 mile and a half. The road which I thought was the county road was back from the beach where it crosses the county line into Los Angeles county; I should think less than a quarter of a mile. That present road was lined out before we went over it. I ain't sure, but I believe it was. I seen stakes there, but I didn't pay any attention to that. I think there was more than one road on the purple strip at the time I am talking about. It was not a graded road but it was a
2075 traveled strip. It was the end of the road which ran through the ranch which I considered the county road, outside of the ranch. There was a sign, "This is the county road to Ventura." And I took their word when I went there. I did not say I had been selling my produce to Mr. Cohn for about 25 years; I said I bought my groceries from him; that was long before I went into this section. I simply continued to
2076 trade with him until lately. I don't want it understood that I have been out in the Yerba Buena country for 25 years; only eight years. I went up there before I took it up and three days after I took it up I went out there and began operations. I sold to M Cohn from Sawtelle before that. I do not know what the elevation is where I live, for sure. I have no way to tell you exactly. It is only a case of guesswork but it is about 1200 feet. That is just a guess.

2077 *Redirect-Examination*

By Mr. Burnell:

The conversation at which the sheriff used the expression "Cut out the rough stuff" was held at Mrs. Decker's. I don't know how many people were present. I didn't count them. I don't know. There was quite a number. It seems to me there was a good many more. The sheriff's name was Zehner, the under sheriff of Los Angeles county. It had no connection with
2078 the breaking of the gate.

Mr. Anderson: In connection with the cross-examination of this witness, if the court please, it is stipulated that the decree of injunction in the case of Rindge Company, a corporation, against Fitzpatrick, Jacob H. Richter, et al, No. B-32480, was signed on the first of February, 1916, and that is the decree of injunction to which Mr. Richter has referred.

2079 Mr. Burnell: Yes; I stipulate to the facts but I don't stipulate it is material.

Mr. Anderson: It is to fix the date when he ceased to use the road.

JOHN FITZPATRICK,

called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

I live in Ventura county, in Little Sycamore Canyon, near Yerba Buena. My business is

2080 farming. I have been in that business 37 years. I have been living in Yerba Buena settlement about 7 years. I own property there, 280 acres.

Q. Now, I will ask you, look at this map which is known as defendant's exhibit No. 6, which is a photographic enlargement of the United States Geological Survey map. You have been in the court room the last two or three days and are somewhat familiar with the
2081 map? A. Yes sir.

Q. Indicate on this map—the Malibu Ranch is shown within the purple line, the eastern terminus being the Las Flores Canyon and the western terminus being the Ventura county line, and the north the broad purple line. A. Yes sir.

Q. And the Ventura county line is indicated by the heavy green line and yellow property line, being the heavy black dash line here, lying
2082 to the east of the green portion indicated by the black line and the ocean; the other Rindge property being indicated by the various purple marks upon the map. The Yerba Buena settlement has been testified to as being indicated by the red circle on that part of the map which reads "Ventura county line" into which Little Sycamore Canyon and Deer Canyon lead, which are shown on the map. Point out as near as you can where your property lies; just step down here and use the pointer. A. The corner of

2083 my holdings is 80 rods from the county line, up this corner, in section 14. My house is in the southwest corner of section 11 on the west of Little Sycamore Canyon.

Mr. Burnell: Now, Mr. Scotten, if you will please make a mark on there with the green pencil.

Mr. Scotten: I will mark that X-15 (in red).

Mr. Burnell: Now, while you are still on
2084 your feet, Mr. Fitzpatrick, I want to call your attention to one other feature of the map, Defendant's Exhibit 6, and that is the red line extending from the eastern line of the Malibu Ranch at Las Flores canyon or thereabouts, through the ranch to its western boundary at the Ventura county line. You notice where that line is at the western boundary? A. Yes.

Q. Now, I will ask you if there is, or has been, any road or means by which to reach the
2085 point where the proposed highway crosses the Ventura county line from your property? A. There is a road running from my house to the Ventura and Los Angeles county line, but the exact location of this new surveyor's road—that is, the distance from the ocean back, the exact location, I wouldn't know only by the survey stakes, where the survey stakes were set when the surveyors were there, and the road hits it just about square.

2086 By Mr. Newby:

This is the road I have described, known as the Mondell road. I heard the testimony of Mr. Jacob Richter. That is the same road that Mr. Richter described. I have known this road which has been referred to as the Mondell road since the last Monday in May in 1911. I have traveled over it. At no time up until about three months ago has it been closed by gates or fences or other obstructions. Since that time I
2087 have never been over the road. I know that during the time I have spoken of, from 1911 until a short time ago, the road was also traveled by other persons by the public generally as far as I know. There never was any objection made to me traveling over it. Of my property there is in cultivation about eight acres. I raise a family garden consisting of all kinds of garden stuff. I have 100 mixed fruit trees five years
2088 old, and I have 60 walnut trees five years old, all of which produce walnuts and fruit. I have 150 grape vines and I cultivate a little barley and corn on this ground and a few beans, anything I can consume on the place. The balance of my land I graze and other people graze it. I have cattle; I have 11 head at the present time, I believe it is. Cattle belonging to other people come on my ground and my cattle go on other people's ground. It is not fenced. I couldn't say just how many. Sometimes there may be

2089 quite a bunch, and then for weeks there isn't any on it.

Q. By what road, path, trail or other means do you get into and out of your property from any point, such as Hueneme, Oxnard, Santa Monica or any other town? A. Well, from the state highway or Triunfo I come over the so-called Triunfo trail.

Q. Step down and take the pointer and point out on the map the road that you take going
2090 from Triunfo to your property—state highway to your property?

(The Witness): That is Triunfo where my pointer is now resting, indicated by the circle and the words "Triunfo." Leaving the state highway I come into Russell Ranch house about there, indicating the road marked in yellow and leading in a southerly direction from the state highway at Triunfo post-office to the Ventura
2091 line, at which point it intersects the road that is shown in yellow on the map (Exhibit 6) as running approximately easterly and westerly, the easterly end being on the state highway, at the point B. M., and the road extending across the map to the west. Then we follow a road and open a few gates to a small canyon where there is a little lake situated. I should judge this would be it, indicating a turning off the road running east and west marked yellow on the map to a road running almost due south and

2092 passing what has been indentified as the Little Mathieson Lake and then proceeding across the boundary between the county of Ventura and the county of Los Angeles. That brings you down to this point on the bottom. We following along here to where the road branches off and turns in a westerly direction, indicating a road or path that is shown on the map crossing the Ventura county line in a general southwest-
2093 erly direction. We come across the Ventura county line just below the lake, or in that neighborhood. Then turn westerly towards the ocean and hit about the Mathieson line. There is a fence through there that is supposed to be the Mathieson line. We hit along about there or a little past. That is where we go with the wagon—a hundred or two hundred yards past it. Then we take the horse trail. That is indicated by the red dots upon the line, being the
2094 trail that passes through the "Tr." of the word "Triunfo" in "Triunfo Pass" and extending thence into the Yerba Buena settlement.

The Court: Mr. Fitzpatrick, is that a well defined road or merely a trail running along the line there?

A. There is places in it, it goes along the bed of the creek, it is impossible to get there in the wet season. I have known it to be that way for two weeks at a time. Other places it has been worked out so that it is a

2095 fairly good road. There is a gate at this supposed Mathieson fence line which we open and pass through and several gates from there on out. Sometimes in the year there is more than others. From the end of this road the trail is good for about a mile and then you get onto the top of this place here, 2727 feet high, and there is a steep grade, it is almost impossible for a man to ride a horse and I have packed
2096 over this grade when I would unload part of the pack at the bottom and went up and then went back and got the rest, and I wouldn't ride a horse down it under any consideration. From the top of this path it is a fairly good horse-trail on down to about Mr. Mondell's place, say a half a mile or close on to half a mile above my cabin, then we head into a good train into my cabin. In fact a wagon can go over it.

(Continuing.) It is impossible to drive a
2097 wagon and team of horses from Triunfo post-office to my ranch by the route I have indicated. That is not the way I have always taken to go in and out of my place. I very seldom take that route. The other route is leading from my place on the dotted line, there is a trail that goes over the Guadalasca grant. That is the trail pretty well shown on the map by the red dots, from the center of the circle which indicates Yerba Buena settlement, in a generally southwesterly and westerly direction until it

joins the road shown in yellow, but it is a little high. That is the general direction. Leaving my cabin here and taking this trail up there is quite a steep hill for the first half a mile but it can be gotten over fairly well. There has been a few wagons went over it and several sleds. You can drive a team over it for about a half a mile and then you drop into Serrano Canyon, a very steep grade, into this canyon, and then you follow down this canyon and you hit this sycamore canyon about here, instead of up there (indicating on map, Exhibit 6) and I judge you come out about straight across in here (indicating).

Q. I will put a mark there where the witness indicates hitting Sycamore Canyon and I will mark it letter "A."

Mr. Anderson: Let me suggest that you first mark—that the first road which you pointed out; mark it "1st," and the second one mark it "2nd," so that we can have some means of identifying them in the record.

Mr. Burnell: I have marked the road that he indicated as the connecting road between the trail leading from Yerba Buena to Ventura county line, and the road marked in yellow across the line first. Now can you indicate how that trail goes through there, using a pencil? A. Well, I don't see any mountain road off here in the hills, but I suspect that is what resembles it, in the first place it is Serrano

2101 Canyon—I judge it is about two miles up there and then back here to Boney Mountain. It would come along through there (indicating). That is just approximate; that brings it down to Sycamore Canyon. Then I travel up Sycamore Canyon; it is a fairly wide level canyon, that a wagon can go over. This is supposed to be the old Conejo road. Up this canyon, up in this neighborhood (indicating); when I get up to the point where the heavy dotted line is
2102 on the map, which was put on the map by Mr. Scotton, I follow those up to about here (indicating), then struck straight up across the hill and hit the top of the old Conejo grade. I don't know how far back it would be but somewhere in there. That way of getting in and out in regard to steepness and whether or not we can use a horse and wagon, we have driven in here, across a barley field, just in across the
2103 barley field until you come to the steep hill and by tying all four wheels on the wagon you can go down the hill into this canyon. This hill is about 400 feet long. We go up, doing the other way: if you have any load, you unload it and drive up empty. We pack the load up by horseback around the side of the hill. There is a trail that leads around the side of the hill. That is not quite so steep there. We are able to take one horse only, at a time, it is nothing but a horse trail to within about one hundred yards

of Sycamore Canyon. There, there has been a few wagons standing under the trees, taking turn about using some of them, some of them hitch on and some of them don't; then we drive on out empty and over this barley field out to the state highway. It is impossible to bring a load in here, or take a load out, by the way I have just indicated, from the Yerba Buena settlement, by loading my wagon at my place or any other place in the Yerba Buena country, and taking the wagon load up to the Ventura highway, by the road or trail just indicated. Up until last July a year ago I went the coast road entirely; that is through the Rindge property. Since that time I have not done so; the gate was locked up and the road was blowed up in places so it was impossible. The only spot I saw the road blown up with my own eyes—I don't know whether there is any name to the canyon or not, but I should judge it was about in the neighborhood of a mile above the Ventura county line. There was a hole blowed in the road, but it could be gotten around. That is the only one I saw blowed up. The Ventura county side they blowed the first hole in the road, but it could be gotten by. That, I should judge, was about August, 1917, or in that neighborhood. It might have been as late as the first of September. In the neighborhood of August. This hole blown in the road, I should judge was

2107 in the neighborhood of a mile from the Ventura county line; it might not have been that far; it might have been three-quarters, but about that far. It was on a portion of what we call the Mondell road that we drove over. It was on the Marion Harris homestead I believe it is, now supposed to be owned by the Rindge Company. I am acquainted with the people who live in the Yerba Buena settlement. There resides
2108 there at the present time in the neighborhood of forty. I don't know as I could state definitely how many resided there prior to the time that the Rindge Ranch was closed to travel. We had a picnic one time in the neighborhood, and there was 76 at the picnic, and every one of them resided in Yerba Buena. That was in the neighborhood of three years ago. There is a school house in the Yerba Buena district. There is 12 children in actual attendance now. Last
2109 year there was 15, and one time there was 21. I believe it was the year before last that the 21 was. I am familiar with the roads that are shown in yellow upon the map leading from Triunfo post-office through the Russell Ranch to the Mathieson Ranch by Little Mathieson Lake, and on up to the homes of Charley Decker and Marion Decker. I am familiar with the part of that road that is known as Malloy Hill. I have traveled over that road. Leaving Triunfo post-office and coming into the Russell ranch

house, that is a fairly good road, considered a good road. Then running westerly I guess it would be, or northwesterly, there is a good road until you turn in about the Little Lake. I suppose that is the Little Lake (indicating). At Little Lake we drive through the end of the Little Lake, the road goes, and at times it is impassable for probably two weeks or three weeks in the rainy season, impossible to get through it or by it in the heavy rains. Then there is a fairly good road until they hit what is known as the bottom of the Malloy grade. I don't know just how long this grade is. It took in the neighborhood of 50 minutes to drive up it with a four horse team. I have hauled several loads over it. I hauled on an average of about 1200 pounds with four good mules, on a light farm wagon, just the running gears of a light farm wagon. I stopped a good many times, to let the teams rest. From there on, after you get on top of the Malloy grade there is a new strip of road built there. That is, I imagine it is new from the condition of the ground, which is fairly level, with the exception that it is so narrow. There was lots of places that you had to hold the leaders in entirely in order to make the turns. After leaving this fairly level stretch of road, then the road pulled up and down over these different little gulches or canyons so that there were several very steep

2113 grades, both going and coming out on this road from—well, a little past Vaughan's place, or in other words, the end of this new graded road—from there to the Charley Decker house, very steep pitches both ways going in and out. I went over this road to Charley Decker's house, perhaps 8 or 9 times both ways, and from the junction of the road here to the Ernest Decker place I have never been over all of it. I cut across afoot and hit the road and went down
2114 here to the house and came back the same way from Charley Decker's place. It would be impossible to haul a load of 1200 pounds by the Malloy grade with two horses and do justice to the horses. As to the condition of the road from Vaughan's place to the Charley Decker place, it seemed to me that the road was just simply laid out the easiest place to build it by settlers or somebody else, just judging by the
2115 description of the road as I went over it. It crossed several steep ravines. There were short pulls and very steep. I don't know but that there is one or two of them steeper than the Malloy grade, because they are short and it don't wear the team out so much; but they are very steep, and lots of places the curves of the road are so short that it is almost impossible to drive four horses and make these curves. It is not impossible, but almost impossible. I used to go over the Rindge Ranch before the gate

2116 was closed. I observed railroad tracks on the Rindge property. I saw cars or other vehicles going over the tracks. One time I saw a flat car with some kind of a gasoline engine—I couldn't describe it—passing over it. I rather believe I last saw any cars on the railroad in the fall of 1913. I endeavored to ride on this railroad; I and a friend was coming down the coast, and my friend was driving the team and
2117 I was walking, and there was two Spanish fellows came along with flat cars and two mules hitched to them, and I asked one of them if I could ride down and they said no, that the Rindge Company didn't allow anybody to ride on the cars. I traveled over the Rindge road from the last Sunday in May, in 1911, until the latter part of July, 1917.

Cross-Examination

By Mr. Newby:

2118 I was present at a meeting at the Lachusa gate on one occasion, when some shots were fired. I fired that shot. I didn't shoot at nobody. I shot at the lock on the gate. I don't know whether I hit it or not; we opened it any way. I did not threaten a number of employes on the Rindge Ranch with shooting, at no time. I did not send word to the superintendent, Mr. Patton, that I intended to shoot him. I never have made any such statement. With this party who shot the lock off of the Lachusa gate, I, in

company with several others, passed down the road and broke open several gates. We didn't use no force any more than to just break open the lock and go through. We done it several different ways. I was armed at that time. Some of the posts were cut off with an axe; some we took off of the hindges; others we broke the lock with a pick; some we broke with a coal chisel; either cut the wire or the chain on the lock, I wouldn't state just which. There were some wire gates there that we cut. I don't know as I could just state exactly how many people were in that party; in the neighborhood of a dozen, though. I couldn't say that we were all armed, but a good many of us were. We were going after provisions. We saw employes of the Rindge Company there that day. We did not threaten them in any way. The first man I met at the Lachusa Canyon was a man we commonly called "Shorty." I understand his name is Maxwell. I met him at the gate and I got off my wagon and I walked down and I told him that we were all settlers from Yerba Buena and we were out after provisions and had to have something to eat to sustain life in ourselves and our families and I asked him if he had a key and he said "Yes." I said, "Will you kindly unlock the gates and let us go to market and get some provisions." He said, "No sir, I will not under any consideration. You

2122 cannot go through the gate." I says, "Well, I am sorry to say, but if you ain't in a big hurry you just stick around and we will see if we cannot get through." I told the party to come on and we opened the gate and went through. We exhibited our weapons. He was armed. I couldn't say what he had; he had a six shooter of some kind on a belt. He was not exactly alone, there was other hands right close to him within forty or fifty feet. When that took place,
2123 I don't know as I could tell you the exact date. I believe it was October or November, 1913. I did not know at that time that I could have gone to Triunfo and gotton provisions. I hadn't been going that way; never had been that way. I didn't know that there was a trail through the Triunfo Pass. I had heard that the settlers had been in that direction but I had never heard that there was a trail there, and didn't know
2124 that you could get provisions. I made no inquiries. Those gates that we broke down after we passed through the Lachusa gates, I rather believe the first one was located at the Escondido road, I don't know really—we called it Dry Canyon. I don't know whether that is the right name or not. I think that is the first one. It is right in that neighborhood (indicating on map, Exhibit 6). This is just west of the place marked "Solstice Canyon." That gate was over a new road where the railroad was covered up

2125 and turned into a road. I knew as a fact that all of the places at which the gates were constructed excepting at Lechusa Canyon were over newly constructed road.

Q. Why didn't you use the old road that you had been traversing? A. Well, I will tell you very quickly. In driving down here we drove over a piece of mesa going out onto the sand as we had done and they erected a new wire fence along the ground in the sand so that we
2126 could not drive in the sand and they had a deputy sheriff at the gate and I asked him to open the gate and let us go out on the sand where we had been driving and he would not do it. I says, "It is just as much harm to break the wire down as the gate, so I guess we might as well break the gate." It was high tide and there was a rocky point where it had been impossible to get by without waiting five or six
2127 hours for the tide to go down. In other words, I preferred to drive over a good road. I say that the deputy sheriff was standing at the gate. I knew that the other portions of the road across which this gate was constructed had been newly built by the Rindge people. After I got by the first gate I didn't go down on the old road because it was impossible to get down there, they erected these gates at such points that we—I don't know whether I can describe it or not, but it is a strip of road perhaps three

2128 miles and there was places that we could pull from the sand onto this road and use it and then pull down again, and at each one of those places they erected a gate and in order to get off the old strip onto the good road we had to break down another gate to get back onto the sand and then we drove down on a piece of old road that we had used for a while to get down to another gate. We broke one gate or two
2129 gates and we discussed the matter and thought it was just as well to break them all than it was to break one, principally so as to give ourselves an opportunity to use the new road. After this first experience I have just described, we did it again, one or two times, in order to get back home, we had to do it. I rather believe we stayed in Santa Monica over night. It might have been two nights and one day and then returned home. We didn't go back by the State
2130 Highway because we had no desire to leave our wagons ten or twelve miles from home. We left them at home, when we went back. On this trip we were using them, took them all the way to Santa Monica. We didn't drive to the State Highway through Triunfo because we could not get home; there was no road; there was no way to get our wagons across that way; it was impassable. When I started out with the wagon I didn't know it was impassable, I didn't know of any way at that time, when I started out; if

2131 I had known it was that way we probably would have gone that way. We went the other way in order to get something to eat. And then we went back to our families and took the provisions. I believe a portion of them made another trip, about the same conditions, broke about the same number of gates. I would not state definitely whether I was with them or not. I have a definite recollection as to how many
2132 trips I made and broke gates. I broke the Lechusa Canyon gate before this trip that we all went in, I was coming out to Santa Monica and I stopped there and talked to the deputy sheriff, 0-99, a deputy sheriff. He unlocked the gate and let me through, and I stopped and talked to him quite a while, general conversation. He said that he had orders to let all the settlers go back and forth to their homes, but he had orders to keep all transients out, hunters, and I
2133 said, "That suits me and I think it does all the settlers." So I went to Santa Monica and got my provisions, some groceries, and returning back to Lechusa Canyon, and the gate was unlocked, and open, and I had plenty of time to drive through. Mr. Wilson was standing at the barn door and he motioned his hand and I stopped and he came over and shook his head and he stepped up and locked the gate. He says, "I got new orders last night. I cannot allow anybody to go through this gate neither

way." I talked to him a while, and he further informed me if one of us was to die he could not open the gate and allow us to pass out. I asked him if he was a deputy sheriff, his name, and he said he was, and he showed me his badge. I said, "Mr. Wilson, you are either going to take me to Los Angeles or I am going home to my family." And I got down and broke the gate and went home. That was before the gang came down and broke the gate. I couldn't say the date; probably three or four weeks. In approaching this gate at Lechusa Canyon, I couldn't tell you as to what road I traveled, the Malibu Ranch, for this reason: When we had a good low tide we drove the beach in preference to going over the mesa at Escondido road—the Ramirez mesa, it is called, I believe. To tell you which road I took at that particular time it would be impossible because if it was low tide, I took the sand. I drove on this road where the gates were, if it was high tide, if not I did not; I do not recall. On that trip I did not break the gate at Lechusa; I took it off the hindges. I couldn't state whether the gates were up at that time or not. I have no definite recollection, not whether the gates were erected at that time; they were erected new that fall. Some time after that, I would not state just exactly the date, we were served with papers, enjoining us from traveling the portion of this Rindge road—

2137 that we could, and we could not appear in court and fight it, and we just let it go. I could not state definitely whether I made the trip through the Rindge Ranch before I was served with these papers or not. I made one trip afterwards. I couldn't state definitely the date, but I came in here and in going back, why I broke the gate at Lechusa Canyon—broke the lock. I did not know I had been enjoined not to do that, not on that gate; never was enjoined at no time
2138 about the Lechusa Canyon road. I did not break any other gate. That is not the last trip I made over the ranch; I made a good many of them, lots of them. Since the injunction was served on me, I could not tell how many I have made, but I suppose anywhere from 15 to 25. I have traveled the only road there is from the county line down to—well, Zuma Beach, passed over Zuma Beach on the sand and then took the
2139 mesa road over Point Dume there and out onto the sand and down along the sand to, about Corral Canyon, in that neighborhood. And then followed along the road across Malibu flat and on down. That is the same road that I had traveled before the new road was built where the gates were, with the exception of Lechusa Canyon. They put a gate there on the old road. I have mentioned being served with an injunction. That was a case in which the Rindge Company was plaintiff, and Fitzpatrick and

2140 Richter and a number of others were defendants.

Mr. Newby: It will be stipulated that that is the same suit in which the decree of injunction was served in February, 1916.

Mr. Burnell: Oh, yes.

Mr. Vallee: We don't stipulate as to the time of serving notice of injunction.

Mr. Newby: The first day of February, 1916.

2141 If Your Honor please I am about to take up another branch.

The Court: I think we will adjourn. I want to ask Mr. Fitzpatrick one question before we adjourn. How many settlers were in that company that came down on the occasion you have described? A. When we broke the gates?

The Court: Yes. A. Why, I guess I could name every man. In the neighborhood of 12.

The Court: How many men were there in

2142 the Yerba Buena settlement? A. Well, the gang that came out. Every man that was in there—there may have been some living in there that was out working or something, at that time, but every man that was actually at home when we started went.

The Court: There was a general movement of the party of settlers? A. Yes, sir, to get something to eat.

2143 Thursday, October 10, 1918, 10 o'clock a. m.
(Jury all present and in the box.)

JOHN FITZPATRICK,

recalled.

Cross-Examination (Resumed)

By Mr. Newby:

I stated yesterday that I had been served with a complaint in action of the Rindge Company against Fitzpatrick *et al.* I believe a copy of
2144 this map which is now shown me was attached to the complaint in that action, served on me. I believe that is the same map.

The map in question was offered and received in evidence, marked Defendants' Exhibit 12, and is included in the exhibits certified up to the Appellate Court by stipulation.

The Court: I want the ruling made clear, gentlemen, that in considering this map, while
2145 you may consider it in connection with the testimony of Mr. Fitzpatrick, and in connection with the cross-examination of the witness, Mr. Fitzpatrick, that you are not to conclude that the matters stated on this map are proved or are a fact, or proven fact in this case.

The Witness: Taking the pointer and tracing out on the map, Defendant's Exhibit 6, the road I used to use before the gates were locked on the Rindge Ranch, right here is where my cabin is located; that is marked 15-X in green.

Just abreast of that Little Sycamore Canyon. Then in a curved direction to about 100 yards of the Malibu corner, the northwest corner of the Rindge line; then we go back in a southwesterly direction, and down here, to the ocean, about 150 or 200 yards south of where the canyon goes into the ocean, probably 100 yards from the ocean, and gets into the beach road, or coast road as we call it, marked with a dotted line, and down to the Los Angeles-Ventura county line, along the Sequit Canyon, commonly known as Secos Canyon, and along over what we term the beach sand, on the black dotted line, down to about what we call Hangman's Canyon. That is Nicolas Canyon, and perhaps 100 yards from Nicolas Canyon we climb up on the mesa and go along perhaps a quarter of a mile, then we follow the dotted line down across the mesa in a zig-zag direction, until we hit about Windmill Canyon, or Haywarth Canyon, it is called sometimes, Trancas Canyon. There is a windmill placed about 300 yards from the ocean and I guess that is the reason that they call it Trancas Canyon. Just a little bit before we get to Trancas Canyon, we hit the sand again, and we call that Dume Canyon; that is sometimes known as Zuma. In the neighborhood of Zuma Canyon we go in the canyon, sometimes following the water course and sometimes not. We go inland perhaps—well, a hundred

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2149 rods, possibly a half mile, from the ocean. We go on this sand to Dume Canyon and go inland there 100 rods or possibly a half a mile, and then we take a zig-zag course about the way the dotted line goes over this Point Dume and hit the beach again at Ramirez Canyon, sometimes called Trestle Bridge Canyon. There is a big, long railroad bridge there probably 300 feet long—250 or 300 feet long. At this point
2150 sometimes when the tide was high so that it was hard to drive on the sand, we drove over a mesa some places 100 yards from the shore and some places a half a mile from the shore. When the tide was low we would rather drive the sand and pull the sand down along here (indicating on map). If we drove over the mesa from Ramirez Canyon, why we would go out here at about the junction of the Escondido road at Latigo Canyon. We also called it Dry
2151 Canyon because there was no water there, close to the ocean, and there we would hit the sand. At times when the tide was high, before this railroad was covered up and turned into a road, I drove over the railroad above the ties in order to get by a rocky bluff that stands along here somewhere. I think this is the rocky bluff (indicating on map), Rattlesnake Point. From Rattlesnake point a mile and three-quarters west, two or three spots there it is difficult to get by. It is west of Corral Canyon. I believe it is

2152 west of Sosto, right in this neighborhood. (Indicating on map.) There is about a half a mile there at three different points it is hard to get by in high tide, or sometimes a medium tide, and I have, before the railroad was covered up, drove over the railroad several times to get by, and then somebody dug it out so it was impossible to drive over those. One time I had to camp about six or eight hours and
2153 wait for the tide to go down. Another time I drove a portion of this railroad to get by a bunch of rocks, and then pulled down through the sand, almost straight down, about 50 feet. The sand was loose and the horse kind of slipped down. Then we drove along this sand a portion of the railroad and crossed this railroad several times down to about two miles from the Malibu Creek; about two or two and a half miles west of the Malibu
2154 Creek we pulled in and hit along the dry land quite a ways and then crossed the mesa. At one place we got about a quarter of a mile from the sand and another place a hundred or one hundred and fifty yards, and crossed the Malibu Creek I should judge about a quarter of a mile from the ocean, maybe a little bit more or a little bit less. Then we took an oceanly direction again and pulled out close to the ocean and stayed along between the top and the dry sand on clear down to the end of the ranch. In some

2155 places we would vary a hundred yards from the ocean and other places we would be a little bit closer. It is not a fact that in traveling from the western extremity of the Malibu Ranch to the eastern extremity, we, except at times of high tide or some unusual condition of that kind, followed the black dotted line indicated on this map, Defendant's Exhibit 6. We followed it to a certain extent excepting at Ramirez Can-
2156 yon. I believe it is not black dotted. Ramirez Canyon to up here—now then, in any kind of a medium tide, indicating the eastern side of Point Dume. In any kind of a medium tide of two or three feet we pulled in over the Ramirez mesa for a distance—I couldn't say, a mile and a half or possibly two miles. At all times the gates were always open and we had free access to it, at all times up until—in fact the first time I broke a gate at this upper canyon I believe the
2157 gates were not locked. I knew that Judge Oster had decided that it was a private road. It is a fact that the line which I have just traced indicated by the black dotted lines coincides with the most southerly line marked on this Defendant's Exhibit 12, indicated here by the white dotted line as being the most southerly, all excepting over the Ramirez mesa, we traveled that whenever it was high tide. This is the line I have just traced, excepting over Ramirez mesa and I traced the same line on the big map.

2158 We traveled in high tide over Ramirez mesa. I knew at that time it was a private road; after this decision I knew it.

Q. Now I will ask you to point out the road that you traveled the day that the gates were broken, beginning at the western extremity of Defendant's Exhibit 12. You were coming in an easterly direction from your home. We drove down the dotted line close to the ocean. We did not go down on the dry sand, but close
2159 to it, and then we turned and went under the high bridge, the Ramirez trestle bridge up this dotted line and over the Ramirez mesa, this red line, I never traveled at no time in my life. There was a gate at the intersection of that red line and this white dotted line; it was not locked; I could not say if it was shut, though. After I got on the northerly white dotted line we went down across this horseshoe bend at
2160 Latigo Canyon. Instead of going out on the ocean, on the dry sand, as we had always done in any kind of fair tide, they had erected a three or four wire barbed fence and kept us from going on the dry sand. We stopped and held a consultation and I told the gentleman that it was just as much hard to break the three or four wires as it was the gate, and if we broke the gate we would have four or five miles of sand and it might have been possible to get by the rocks and it might not, as it was a

2161 medium high tide and it would have been possible that we would have to drive the stretch of dry sand to make the trip. That stretch of dry sand was the old road at low tide. Before this new road was built there was several strips on this railroad that we pulled up on, two or three hundred yards; sometimes a half mile, to rest the team. I expect it was railroad right of way, a portion of it was anyway, we pulled on the ties and a portion on the side. After having
2162 this consultation, the first gate we broke was in this neighborhood here (indicating), across the red dotted line, east of Latigo Canyon, right in that neighborhood, within a couple of hundred feet. Then we drove down the dotted line. I couldn't say just exactly where the next gate was, but if I remember right there was, I believe, seven gates—five or seven gates in all these red streaks here, and I wouldn't say if
2163 there should be any more red line down here or not, but in all this new road that was erected there were five to seven gates that we broke. In the course of my traveling along that road I observed side gates going out on to the ocean sand. To locate the first one that I observed of the side gates, it would be pretty hard to locate the exact location. At that point east of Latigo Canyon there was a gate going into the hill, the Escondido road. There was a gate south towards the ocean that would have led us to the

2164 old highway. If I remember, it was locked. We didn't break that and go to the old highway because we had no desire to sacrifice our team and their strength, and after we broke one gate we might as well break them all.

Q. In order to get across the ranch, you broke all these gates? A. In order to stay life in ourselves and families, we did. We left home for that purpose.

2165 Mr. Anderson: I move to strike out the portion of the answer "In order to stay life of ourselves and families, we did," and leave just "we did," which is in answer to the question.

The Court: Motion denied.

(Exception No. 29.)

Mr. Anderson: It is a conclusion of the witness that he could not travel on the sand to get something to sustain his family.

The Court: No argument, gentlemen.

2166 I observed several other side gates leading in to the ocean on that road before I reached the easterly boundary of the ranch. Some of these gates that we broke led out to let us down onto the sand on the lower road.

Q. And the only reason that you did not break through any of these side gates and get on to the old highway was that you did not desire to strain your horses by using the old highway? A. I just stated that some of these

gates led out to the sand on the old highway, and we broke them to get on there.

Mr. Anderson: I move that that be stricken out as not responsive, and that the witness answer the question. A. Making this trip.

Mr. Anderson: Just a moment, if the court please.

The Court: Motion denied.

(Exception No. 30.)

Mr. Newby: Will you please state where on the trip you broke any side gate in order to get on to the old highway? A. Well now, the exact location is pretty hard for me to tell. It is pretty hard for me to tell the exact location, because I never kept no track of those gates or how far from the canyon or rocky bluff or anything, but there were several places that it was possible to drive this dotted line and pull up on this road with a little slope or something, and at each and every one of these places there was a gate erected in order to keep us from pulling up on that good road. That is why this number of five to seven gates was erected on that stretch, in order to keep us from pulling on these strips of new road indicated by this red line. While we were on the red line, there was nothing to prevent us from breaking the gate if we were so disposed and getting out on the highway.

Q. Now, will you indicate on Defendant's

2170 Exhibit 12 at what place on the old highway you first got on that road? After going over the red line, where did you first come to the old highway? A. Does this red line represent—

Q. Newly constructed road. A. Between the Malibu Creek and the Ramirez Canyon?

Q. Yes. A. I should judge it would be right here, then (indicating).

Q. At Puerco Canyon? A. We pulled off the old road on to the new one.

2171 Q. That was the first place? A. I believe it was the first place we pulled off or broke a gate to get on to it, the newly constructed road. Being on the old road we didn't continue on the old road because we didn't dare to sacrifice our teams' strength in pulling the dry sand. In other words, we preferred to break private property and trespass upon a private road rather than strain our horses on the old highway. I

2172 went into the present location where I have been living the last Sunday in May in 1911; that was my first trip in the neighborhood. I got in over the beach road, through the Malibu Ranch and up the Mondell road; along this same dotted way that I have indicated, and over the Ramirez mesa. I did not know at that time that there was an injunction in force preventing the Rindge interests from interfering with any traffic; I didn't know a thing about the condition of the road in any way, shape or form. I found it

2173 open; I didn't know the reason for it being open. I don't believe I learned that it was kept open by injunction. Probably the first time that I ever knew it was closed to traffic was the first time I broke the gate at this upper canyon; I believe it was in the fall of 1915. During all of that period of time from 1911 to 1915 I had uninterrupted means of ingress and egress to my place and traveled this dotted line I have indicated. During that period of time I owned
2174 under cultivation about seven acres or eight acres, in that neighborhood. I didn't strain myself any in grubbing the brush; I took my time at it. I was up there for the purpose of opening that up for cultivation; that is my purpose, to make a home out of my place; and in four years I have gotten under cultivation seven acres, in that neighborhood. I was never prevented from hauling out any of my produce before 1915. I
2175 hauled things out of that settlement during that period of time over this Mondell and Malibu road. I could not tell you approximately the elevation at my property line along the Mondell road, say opposite the ranch corner there. How steep the Mondell road is going north from the ocean is pretty hard to tell, it is a very steep road. It is a fact that with certain loads I unloaded my teams at the bottom of that grade. Up that road I drove a two horse wagon and hauled about a thousand pounds, and I hauled

2176 the school house in and the furniture, and I estimated the loads were 1600 pounds with four horses, over the Mondell road. There is three or four very steep grades before you get clear to the top. The first grade going up from the ocean, with the bends in the road, it is right at a mile long, more or less. I could not tell you about the per cent of the grade. I characterize it as very steep. The next steep grade on the
2177 Mondell road is about a mile and a quarter or a mile and a half from the ocean; it is not so long; it is a couple of hundred yards. That is about the same thing as the first one. The next grade before reaching the summit we call "V" hill. It is probably two miles from the ocean. It goes down into a canyon and up again. That is about like the others. When I get to the summit I do not know exactly what the elevation is, about 1500 or 1600 feet. That
2178 third grade is about the same thing as the other two. It is pretty constant incline, going north, until you reach the summit, difficult to negotiate with the wagon, with any considerable load; you have to take a pretty light load over it to make it.

Q. How far west of the Ventura county line and the Los Angeles county line does the southerly end of the Mondell road come? A. That is impossible to tell; it is possibly a mile and a half or three-quarters. The nature of the inter-

2179 vening territory between the point where it comes south and then turns east to Santa Monica is kind of a mesa and crosses three or four deep ravines and horseshoe bends in order to get around; it is a fairly passable road. I do not know who built the road; it was there when I went there.

Q. Now does the Mondell road, when it turns easterly to the county line, go north or
2180 south of the red line which is the proposed right of way? A. Judging by the surveyor's stakes it just about hits it square.

Q. What surveyor's stakes? A. The county surveyors. I know when they were put there. I saw the man working on the ground. The first survey was in the winter of 1915-16 and the second one was in the summer some five or six months later. I saw the stakes both times, practically two sets because right at the county
2181 line, I pulled out a lath myself and it was renewed afterwards.

Q. Isn't it a fact that the old Mondell road strikes the county line at the old Mondell road, when it turns east, that that point is about 150 feet north of the proposed right of way if projected west? A. No, sir, I should judge that it is just about the exact location.

Q. The Mondell road is indicated, is it not, on Defendant's Exhibit 6 by a black dotted line? A. Yes, sir. I understand that that indicates

2182 the Mondell road. We call it the Mondell road, where it starts over the top, the other road, is the old Marion Harris-Jasper Thomas road.

Q. Isn't it a fact that the Mondell road terminates at a point west of that land indicated by the purple, or west of the county line—and I will explain for your information that those purple lines, the territory represents Rindge property, outside of the Malibu Ranch. A. Yes, sir—Read the question. (Question read.)

2183 A. Do you mean that it terminates above this?

Q. Yes. A. No, sir. We consider that the Mondell road terminates on the side of the hill somewhere, it is in the red, or a little lower down, I should judge about here, and hits into what is known as the dotted line across the Marion Harris-Jasper Thomas old homestead. It is pretty hard to tell the exact location. This

2184 dotted line extends up Yerba Buena Canyon past the Rindge property, into William Houston's yard.

Q. Now, if you will please indicate on the map what you consider the southerly terminus of the Mondell road, we will ask Mr. Scotton to mark it with a red mark. A. I should judge it would come down in here about somewhere, along in that neighborhood, at the foot of the hill.

2185 Mr. Newby: Now, indicate some number so as to make it certain.

(Mr. Scotton marked on map, Defendant's Exhibit 6.)

Mr. Newby: How have you marked it?

Mr. Scotton: With a circle marked 16 at a point where the Mondell road comes down from the hills in a southwesterly direction.

(Continuing.) The figures in red, number 16, and the circle and red line, indicate the
2186 southerly terminus of the Mondell road, as I understand it. When I traveled over this road that I have indicated, I got to the southerly terminus of the Mondell road, as indicated by the circle. Then I traveled this place indicated by the black dotted line going easterly.

Q. And that is the correct location of the road that you traveled? A. Well, I couldn't say as it is the correct location, but it is in that
2187 neighborhood. There is no other road except that one; only one road that I ever saw there. I can not tell exactly the approximate distance of that black dotted line, for the line representing the road west of the Malibu Ranch line, between the southerly terminus of the Mondell road and the county line there varies quite a bit. The road is crooked. It is about a mile and a half, the distance from the point indicated by 16 to the county line, in that neighborhood. In some places I should judge it is 100 yards and

2188 some places it is a quarter of a mile, possibly 100 rods. There might be a little spot a half a mile. It is crooked. Where it crosses the Ventura county line, it is a little bit hard to state approximately how far it is north of the ocean. It is in the neighborhood of 200 yards. I couldn't say; I never measured it or anything. I am just guessing at it. That is my best judgment, in that neighborhood.

2189 Q. Now, since the time that you have stopped going through the Malibu Ranch road and this Mondell road, you have traveled out in the other direction, have you? A. Well, I continued to use the Mondell road and tried even at the present time, but to get any provisions or anything I travel the other direction.

On the Mondell road at the present time I went to visit several of the neighbors right in the near future, and I have went the full length
2190 of the Mondell road and down to the county line, oh, I should judge about three months ago the last time. I went over that dotted line in that neighborhood. I went along the road. That is the only road that was there. I went to Arroyo Sequis Canyon, and I traveled the same road up there at the county line that I had always traveled before. Did just the same. They plowed a little there; it might have been moved a foot or two, but it is approximately the same place. In order to get provisions I go the other way,

2191 most generally the Guadalasca way. I went the Triunfo way a little, but very little. Either one or the other of those two roads, Guadalasca or Triunfo, I have used for that purpose ever since the Malibu ranch has been closed, even since last August, a year ago, August, 1917. Prior to that time I went over the Guadalasca Ranch once, to pay my taxes, and broke a gate in order to get through it; that was in the spring of 1916. I
2192 was riding a horse. I couldn't see any way of getting through without breaking the gate. There was a lock on it. I didn't ask permission; there was nobody there to ask permission. I never went either one of those roads, at any other time prior to the closing of the Malibu. I knew before the Malibu Ranch was locked, as a positive fact, that my neighbors got in their provisions over the Malibu Ranch. Before it was locked all of my neighbors came out through
2193 that way except Bruno Persh and the Serrano family, and I never had any neighborly dealings with them—hardly acquainted with them up to that time. They had permission and keys to travel this piece of road, the Guadalasca, that leads to Oxnard and Hueneme. I knew in 1915 that they had traveled that way; I knew those two families had. I stated on my direct examination that I had traveled over a trail from Triunfo post-office to the Yerba Buena settlement. Starting from Triunfo post-office, there

2194 is a fairly good road to the Russell ranch-house. You turn there. It is pretty hard for a man to tell what direction it is. I should judge it is the ocean direction anyway. From Triunfo to the intersection is in the neighborhood of three-quarters of a mile or possibly a mile; then the road turns westerly, a fairly good road with the exception of the fact that it crosses a big creek here, and there is no bridge, and at times it is impossible to get over it, in the rainy season.
2195 The distance to where it turns south is about a mile and a half or a mile and a quarter, I should judge. You go south, crossing the creek, and we pass along the side of a little lake known as Mathieson Little Lake, driving past this lake and coming into the creek at the other end, we drive into the lake and it is impossible to get through there even on horseback, for sometimes a week, in the rainy season two or three weeks.
2196 I couldn't say the distance of that southerly stretch to the easterly end of the red line which I have marked first; a mile and a half or two miles. The distance across the southerly end of Mathieson Lake, where I say at times the traffic is interrupted, is possibly 300 feet, in that neighborhood. Following down here, then we turn off and cover a raise, a fairly steep grade, an automobile can get over it, about in the neighborhood of the red line, and we come across to Mathieson's line, a wire fence, and get into Mr.

2197 Johnson's yard, it is in this neighborhood somewhere. That is at a point southwest of the figures 1728. The distance to that point where the red dotted line commences, according to the automobile figures, is about 5 miles to Triunfo post-office. The distance represented by the red line is from a mile and a half to a mile and a quarter. It is a mile and a quarter, possibly, all this here, is the same distance, it is maybe a mile and a quarter. On the map there it is
2198 shown as being the same distance—there ain't much difference. And then we follow on horseback, around the trail here, until we hit the base of Triunfo Pass, and it is almost impossible for a horse to carry a man up. The distance from the figures 1728, at the end of the red line, to 2227, on the base of the grade, the foot of the hill, is, I should judge, a mile and a half or mile and three-quarters. It is pretty hard to tell
2199 what is the length of the hill. I expect it is about three-quarters of a mile straight up. I do not know the elevation at the bottom of the hill. At the top of the hill there is a bench mark, 2227 feet. This trail passes about 30 feet under this bench mark, or lower than the bench mark so that where the trail passes over the pass it is about 2200 feet; to the bottom, I think it is about three-quarters of a mile. From here, coming up this hill that trail is so narrow that a horse has to step with one foot in front

2200 of the other to make it. The character of the mountains is very, very steep; places there is sliding rock, and it is very dangerous for a horse to walk over it. It is a flat, sliding, rocky formation. In the top of this pass, there is a fair horse trail, where a horse can carry a man with reasonable ease, down along about where the dots are, in that neighborhood, into Henry Mondell's yard. How far from the top of the
2201 mountain it is to Mondell's yard is pretty hard to tell. I should judge it is about six miles. That is a fairly good horse trail. A horse can carry a man over it all right. After leaving Mondell's, it is possibly a half a mile, and then we turn to the ocean and there is a fairly good wagon road from Mondell's road to my place. We pass over it in wagons. The distance from Mondell's house to the Triunfo post-office over the road or trail is in the neighborhood of 12 or
2202 13 miles. To make that trip I have walked it in about four and a half hours, and I have never made it in less than five hours with a horse, and generally five and a half hours. My nearest neighbor is Mr. Mondell, I guess. He was living there when I went in. Of the road between my house and Mondell's, there was some that was built when I went in; some of it was built the next year afterwards, and some that has never been built. We just simply drive over a level strip of ground. Of the gates we had

2203 to open on that Triunfo road to my place, four is the lowest, I believe, I have ever opened, and I have went through there when I opened seven or eight. They are not locked; I never found any of those gates locked. I have never seen anybody do any work on the road that I have just traced on the map. I saw the settlers do some work on this horse trail, indicated by the dotted red blots there. I saw settlers work on
2204 that, but on the road I never saw any work done. I have passed over it when I could see that there had been work done, but I don't know who done it. There are about 40 people in that settlement right at the present date. They represent 15 families. About three years ago there were 76 persons. They were right there and counted at the picnic, every one of them actual residents of Yerba Buena. I couldn't tell just how many families. Some of those additional
2205 36 people went into that settlement before I did and some after I did. They were not all in there, between the years 1907 and 1911. I went in in 1911, and they were not all there. When I went in there were six or seven or eight families. I know them all, and the balance went into that settlement after 1911; they moved in. Some of them might have filed on their holdings before, but they came in after that. That is the way I got my land, filing upon Government land, under both the Timber and Stone Act and

2206 homestead. At the present time I have three post-offices, Triunfo, Newberry Park and Santa Monica.

By the Court: I say there is a post-office at Triunfo Pass. That supplies postal facilities to the farming community around Triunfo Pass. They get their mail there, and the majority of the people in Yerba Buena get their mail there. There is a little farming district around Triunfo Pass, the Russell Ranch and the Conejo Ranch—
2207 several.

By Mr. Newby: I travel to Newberry Park over the dotted line from Guadalasca or Broome Ranch out to the old Conejo grade and up. When I travel over the same road, I do not then go west on the state highway. I follow this dotted line along here (indicating on map, Exhibit 6). I go down here to Sycamore Canyon, up Sycamore Canyon here and there is a trail
2208 runs up here and hits the top of this old Conejo grade. Then I go in an easterly direction towards the ranch house here,—I judge it is about here—and then turn and go down here, and then I make another turn in a zig-zag direction and I should judge Newberry Park is over here (indicating on map). Yes, here it is. It is a mile or so after you get into the state highway. That is not a good road from my place going that way. At the present time we have a fairly good horse trail to Sycamore Canyon

and up Sycamore Canyon until we cut up across the hills here; and then it is a very poor—very, very poor. When we get out here (indicating on map, Exhibit 6) we hit a good road then to Newberry Park. From Sycamore Canyon along here for possibly three or four miles you can drive a wagon, and you can get a wagon through the brush clear out. There is no road there whatsoever—just simply drive over the mountains. When we drive over here we go through a barley field that is rented from the Broome ranch by Ed Borcher, drive through his barley. (Indicating on map, Exhibit 6). There is no road of any kind and in order to get an empty wagon out here and up the steep grade, you must have nothing in it, only a good team hitched to it, and in order to come in and come down that hill with any kind of a load you must tie all four wheels in order to get your wagon down, even though you have good brakes. That grade is at least 400 feet; maybe a little longer. I do not know the elevation. It looks straight down, when you start. I do not know the grade. I stated upon direct examination that I had been refused the privilege of riding on the cars of the Rindge Company. I did not offer to pay any fare.

2212 *Redirect Examination*

By Mr. Burnell:

At the time I attempted to ride on this railroad no one asked me for any fare. I did not see any persons there in uniform such as usually is worn by conductors or brakemen or any kind of a uniform.

Q. Did you ever see, on that railroad, at any time, any persons, conductors or brake-
2213 men's uniforms?

Mr. Anderson: Objected to as incompetent, irrelevant and immaterial, not redirect examination.

The Court: Objection overruled.

(Exception No. 31.)

I never saw any passenger coaches on the railroad. This car that I tried to ride on was a flat car and was in charge of two Spanish fellows: I did not see any ticket station. I
2214 asked these Spanish fellows if I could ride on the car.

Q. Were you ready, able and willing to pay a fare, if a fare had been asked of you?

Mr. Anderson: We object to that, if Your Honor please.

The Court: Overruled.

(Exception No. 32.)

A. If it was a reasonable fare, yes.

2215 By Mr. Burnell:

At the time that I and the 12 residents of Yerba Buena district went through the Rindge Ranch and broke the gate, we did break gates and other property other than the breaking open of those gates which prevented our passage through the ranch. In order to cross the Lachusa Canyon bridge, in order to stop us from crossing the Lachusa Canyon bridge they had taken up the flooring of the bridge, a good
2216 wide space, 8 or 10 or 12 feet, or so, and we went down the canyon to where the hog corrals were, and there was a small bridge there in order to cross the runway and we tore up the floor and brought it up and put it down on the main road bridge and made us a floor and proceeded across. There was no way that we could have crossed where the bridge had been torn up without making a new flooring to the
2217 bridge. Apart from that, neither I nor any other members of the party broke anything else. It was a fact that my family and all others needed provisions. We had borrowed from one another until the whole neighborhood was practically out of provisions. On our return trip we found the bridge broken, so that we could not pass, and we found the gates which we had opened on the way down to Santa Monica locked up again; all of them were relocked. In regard to the seven acres of land that I have cultivated

2218 and had cultivated prior to 1915, I changed work with some of the neighbors, and changed back with them. The nature of the ground before it was cultivated was brushy land and I had to clear that. It is impossible for me to state how long it took me to clear this seven acres, because I have always had cattle more or less in the country, and I spent a good deal of time running around different places, and I never have had time to get right in and work clearing land.
2219 I used the spare time that I could take from the attention to the cattle to clear the land. I have cleared now about seven or eight acres. I haven't cleared any more because I am clearing a little bit every year, but it takes most of my time taking care of my fruit trees and running after the cattle, so I have hardly any time to put in clearing the land. What little I have cleared does not amount to much.

2220 Mr. Burnell: Is it possible for you to take wagons out and bring wagons in to your place by any road other than the road through the Malibu Ranch?

Mr. Anderson: We object to that as not redirect. It was gone into fully on direct and on cross-examination.

The Court: Overruled.

(Exception No. 32.)

A. It is impossible to take them out any other route.

2221 Mr. Burnell: Now, prior to the year 1915, what was the general nature of the trail or way by which you could get out through the Guadalasca ranch?

Mr. Anderson: I object to that as not redirect. This has been gone over and reiterated by us.

Mr. Burnell: I think not, Your Honor. He was asked on cross-examination about his knowledge as to Serrano and somebody else go-
2222 ing out that way.

The Court: Read the question. (Last question read). Overruled.

(Exception No. 33.)

A. About a half or three-quarters of a mile from my house, getting up on a ridge, you drop over into this Serrano canyon. It was a fairly good trial. A two-horse team could go over it with a sled. And after you get on top, when
2223 you drop down into this Serrano canyon, the trail was almost impassable, it was so steep and narrow and brushy that a man could not ride a horse over it.

Mr. Burnell: How do you get your provisions in at the present time?

Mr. Anderson: I object to that as not redirect. That was fully gone into without any question.

The Court: Overruled.

(Exception No. 34.)

2224 A. Sometimes I make the entire trip from Newberry Park in a-horse-back, packing them; sometimes I take a wagon, a borrowed wagon, from Sycamore Canyon out and bring it into Sycamore Canyon and load my stuff onto a horse and pack it home two and a half or three miles; and sometimes I bring a light pack from Triunfo Pass in horseback. I use plows and harrows in cultivating my land. I had them in
2225 before the road was closed. You could bring a walking plow in on a horse's back, or you could take any heavy plow apart and bring it in on a horse's back, and put it together when you got it in.

Q. Could you bring a thresher in that way?

Mr. Anderson: I object to that on the ground that it does not appear that there are any threshers in that neighborhood.

Mr. Burnell : There are beans raised in that
2226 neighborhood.

The Court: Overruled. I think you are prolonging this examination unnecessarily. Objection overruled.

(Exception No. 35.)

A. Yes, sir. There was a threshing machine brought into the neighborhood this year by Henry Mondell.

(Continuing). It was brought in to Ed Borcher's place in an automobile; it was loaded onto a wagon there and taken most to the top of this

2227 old Conejo grade, and over the top of the hill and over up to Sycamore Canyon, and up Sycamore Canyon to Serrano Canyon. It was put on a sled there. They worked, the Serrano boys, and Persh and Ed Borcher, to widen the trail and all the loose parts were taken off of it to make it as light as they possibly could, and then I believe they hauled it from Serrano's place up to the foot of this hill on a wagon, a
2228 distance of a mile or so. Serrano has an old wagon at his place. Then it was put on a sled and hauled up this steep hill out of Serrano Canyon up on top and down through my place and over to Mondell's ranch on a wagon—on a sled I should say. It was hauled all the way from Serrano Canyon into Mondell's place on a sled. Then the parts were put together again and it was used. When I take the trail to go to Triunfo pass, I have to go first through Mr.
2229 Mondell's yard. That is the yard around his house; and then in getting out on the other side I have to go through the yard of a man named Johnson. Both Mr. Johnson's place and Mr. Mondell's place are private property, and no public road so far as I know. No road of any kind; just simply a horse trail.

Q. With reference to the time when the Rindge Malibu Ranch was closed to your travel —with reference to that time, when did the 36 residents of Yerba Buena township that repre-

2230 sents the difference between the 40 that are now there and the 76—when did they leave?

Mr. Anderson: Objected to as not redirect, and also on the ground that it is ambiguous. There seems to have been, under this witness's testimony, two periods when the ranch was closed, one in 1915, when they broke through the gate at Lachusa, and the other at the time of the injunction last year. It seems to me that there is an ambiguity there.

2231 Mr. Burnell: To cure that ambiguity, I will ask another question.

The Court: Objection overruled. Read the question.

(Last question read.)

Mr. Anderson: It is understood, Mr. Burnell, that our general objection to all this line of testimony is still standing?

Mr. Burnell: Oh yes.

2232 Mr. Anderson: Yes, that will save time.

(Exception No. 35.)

A. Well, they left at different times. Some of them left before the road was permanently closed last year, and others left about that time, and one—I guess one since that time has left.

(Continuing). The most of these 36 people left during the period of 1915 when we was having this trouble over the road, and during that period and up to a month or so ago. They practically all left during that period. I couldn't

2233 just state the date of that picnic. I believe it was about the 4th of July, or Thanksgiving Day of 1913. We had a big picnic, there was a couple of times we had a picnic and there was the same number. One was on the 4th of July and on Thanksgiving and which one had the largest number I don't remember.

Recross-Examination

By Mr. Newby:

2234 One person has left since the road was closed, the rest of them left prior to that time.

Q. Now, did any of these persons, were they homesteaders, living on the land, prove up in the meantime and leave?

Mr. Burnell: Objected to as calling for a conclusion of the witness.

The Court: Objection sustained.

(Exception No. 36.)

2235 Q. By Mr. Newby: Were any of them who left homesteaders?

Mr. Burnell: Objected to as calling for a conclusion of the witness, and not the best evidence.

The Court: Objection sustained.

(Exception No. 37.)

2236 Afternoon Session, 2 o'clock P. M.

S. HILL BERKLEY,

a witness called on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

I reside in Santa Monica. My official title is commissioner of public safety. Santa Monica is governed under what is known as the commis-
2237 sion form of government. There are three commissioners. I am the chairman of the present board, but generally known as mayor. I am familiar with the proceedings and actions taken by the board of commissioners during the past year, 1917.

Q. Mr. Berkley, I show you here what appears to be a certified copy of a resolution, and ask you if you recognize that (showing docu-
2238 ment to witness).

Mr. Anderson: The resolution is certified by the city clerk, isn't it?

Mr. Burnell: Yes.

Mr. Anderson: I think that is all the identification necessary.

Mr. Burnell: Very well. We offer in evidence that resolution. A certified copy of a resolution adopted by the commissioners of the city of Santa Monica on the 10th day of July, 1917.

2239 Mr. Anderson: To the offer of that resolution, we object in so far as the main case is concerned, upon the ground that it is immaterial, irrelevant and incompetent; that it bears date more than a year after the institution of this action on the main case; that it is dealing with a matter that is not within the official jurisdiction of the board, and amounts to nothing more or less than a mere expression of opinion of the
2240 members of the board, even though it may have been officially passed. In other words, that it is not one of the matters with which the board of trustees, or the board of commissioners of the city of Santa Monica — over which they have any jurisdiction, and carries with it no greater weight than the expression of opinion of any other congregated body. As far as the Little Alisos Canyon road is concerned, we offer all the latter objections, and so far as the
2241 beach road is concerned, we offer all of the latter objections, the objection that it was passed after the commencement of those actions not being included.

Mr. Burnell: We offer as a separate offer for the main case of the Malibu road, and then we make a similar offer in each of the other two cases. In behalf of the first offer, our theory is that it is admissible in evidence directly upon the question of necessity, as showing that one of the municipalities, and the one nearest to the

2242 proposed road, has taken official action in requesting the board of supervisors of this county to proceed with the acquisition of such a road. With regard to the other two cases, on that theory also, and likewise upon the theory that it is competent in view of the case so far made by the defendants, for us to show all the matters that were considered by the board of supervisors of this county in ordering the road
2243 condemned, and in resolving that the road was necessary.

Mr. Anderson: Of course, I presume you intend to connect that. There is no evidence here at the present time that this has ever been transmitted to the board of supervisors.

Mr. Burnell: We will connect that by showing that a copy was transmitted and received and duly considered by our board of supervisors.

Mr. Anderson: Assuming the connection will
2244 be made, we simply rest on the objection we have made.

The Court: What is the theory of the offer so far as the main case is concerned?

Mr. Burnell: Upon the theory that it is evidence as to the necessity of the road, in that it is the official declaration of the city of Santa Monica, through its official legislative body, requesting the supervisors of Los Angeles county obtain such a road and to go ahead with the proceedings for the obtaining of such a road. In

2245 other words, we think the necessity is proven in a large measure by the public demand; and this is evidence of the public demand—not of a few individuals, but of the city acting through its official representatives.

The Court: It is admitted, however, that the resolution was passed after the action was taken?

Mr. Burnell: After the first action was begun on the main road.

2246 The Court: Is it the contention of the county that the necessity and public use can be shown after the action has been brought?

Mr. Burnell: I think so, Your Honor. That is, the question to be determined is not whether a road was necessary in 1916 alone, but whether there is at the present time or in the immediate future a necessity for a road.

Mr. Anderson: We shall contend that the 2247 necessity is as to the date of the resolution and the commencement of the action.

The Court: I think I shall limit it to the two cases having been commenced subsequent to the passage of the resolution. The objection will be overruled as stated in the ruling of the court. The document will be received and marked Plaintiff's Exhibit "D."

Mr. Anderson: Is it admitted in all three cases?

The Court: No, the two cases mentioned.

(Exception No. 38.)

2248 The Court: Gentlemen, this document will be considered by you only in relation to the Alisos Canyon road and the beach road so-called. It will not be considered by you in determining the issues in the so-called main Malibu Ranch road.

Mr. Burnell: The document is as follows:

"Resolution #99, (Commissioners' Series).

Resolved, That it be the sense of the city
2249 council that this body endorse the movement to open a road through the Malibu Ranch and hereby request the board of supervisors of Los Angeles county to take such legal steps as may be necessary to secure such road.

Be it further resolved, That M. K. Barretto, commissioner of finance, ex-officio city clerk, be authorized to forward a copy of this resolution to the board of supervisors of Los Angeles county.

2250 I hereby certify the above to be a full, true and correct copy of the original resolution on file in my office, and that the same was adopted on July 10, 1917.

FRANK J. TOWNSEND,
Commissioner of Finance and ex-officio City Clerk.

By L. J. HOGGMAN, *Deputy.*"

And impressed with the city of Santa Monica seal.

The Court: Defendants' Exhibit "B."

2251 E. A. SMASHEY,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

My name is E. M. Smashey. I live in Santa Monica. I am a janitor at the present time.

Q. Calling your attention to defendants' Exhibit No. 6, being the large map here upon the
2252 easel, this is a photographic enlargement of the United States geological map. The black line at the top with the words "State Highway" above in red, is the state highway from Los Angeles to Ventura and north. The country below the state highway is the Santa Monica mountains. The purple line appearing upon the map is the north line of the Malibu Ranch, the Rindge Ranch. The purple line all the way around, indicating the boundaries of the ranch
2253 surrounding it. The point here where the circle appears is the Triunfo post-office. The point farther down in a southeasterly direction is Cornell. I will ask you to state whether or not you own any property in the Santa Monica mountains? A. I do. Township 1 south, range 19 west.

Q. This section north of the Malibu Ranch that is purple, is indicating the holdings of the Rindge Company or May K. Rindge. This particular piece being owned by the Rindge Com-

2254 pany. Just indicate where your holdings are. A. This 40, this 80 in section 20 and 40 in section 17, here and here (indicating on map, Exhibit 6).

Q. Now, will you have Mr. Scotton make a mark there.

Mr. Scotton: I have placed a blue cross marked X-17 at the intersection of the corner of sections 18, 17, 20 and 19. The township is township 1 south, range 19 west.

2255 (Continuing). That is where my property is located. I own there 160 acres of land, more or less. I do not live there at the present time. I have lived there; I left there in 1913. I took up my residence in February, 1912, and I lived there consecutively for 17 months. I have a family; it consists of wife, one daughter and five sons. At the time I was living there, all my family resided with me; at that time there was

2256 four children. At the time I lived there, when I wanted to go to Los Angeles or Santa Monica, I went going toward the ocean, down Encinal Canyon, what is known as the Marion Decker road, and then down the beach road to Santa Monica. I have been up there since I left there in 1913, several times. I don't remember when the Malibu Ranch was closed or about when; I remember reading about it in the paper.

Mr. Anderson: You may state to him, the latter part of July or first of August, 1917.

2257 Q. 1917, the ranch was closed, the latter part of July, or the first of August, 1917.

(Continuing). I have been up there since that time. When I went up since, I went the coast road to Topanga, up the state highway to Triunfo, up through the Russell ranch, up to the Little Dam and in the back country road. I went in a machine part of the way and walked the rest of the way. I went in the machine as far as Vaughan's and walked the rest of the
2258 way. My place from Vaughan's is, I should judge, about 2½ or 3 miles.

Q. Why don't you live there now?

Mr. Anderson: That is objected to as incompetent, irrelevant and immaterial. He left in 1913, which was long before these proceedings were thought of or even contemplated. Why he doesn't live there now is immaterial. He left long before the proceedings were commenced.

2259 The Court: You can cross-examine on that. I think that it is irrelevant testimony. Objection overruled.

(Exception No. 39.)

A. It would be almost impossible to live there now because of a lack of funds, for one thing, and you could not market anything that you could raise on the ranch so there would be any profit, on account of the transportation, lack of good roads. When I say lack of good roads, I refer to a road leading from my ranch

2260 to Santa Monica; all of them, to my ranch are not good. I can show you upon the map where I walked from Vaughan's.

Q. The point on the map X-5, has been testified to by the previous witness as being Vaughan's place. Let me illustrate the map further. The yellow marks upon the map, the yellow lines, what has been testified to as being roads at the present time. The little mark in
2261 green upon the map being Little Mathieson Lake, the portion where my pointer is near the words "Russell Valley," being Russell Valley, and the point of the circle being Triunfo post-office X-3 is the Charles Decker place; X-11 being the Marion Decker place. A. Starting from my ranch at this point, I cannot follow that road but it goes in a northerly direction, on the ridges and around and down Encinal Canyon to the Marion Decker road.

2262 Q. Indicating from the point X-11 or X-17, which you have testified to as being your place, in a generally easterly direction partly over the part marked on the map in yellow, indicating a road, to what point, do you say—about the Marion Decker place?

Mr. Anderson: We will stipulate that that has been testified to to be the Ernest Decker place.

Mr. Vallee: This being X-11. The witness passing upon the trip indicated, X-4, appearing

upon the map close to the figure 21 in section 21. A. On down to the beach road through Santa Monica; I have never been out the other way. I walked, I never drove it. The portions that I walked and also that portion that I rode, afterwards, across the country, down through here (indicating the line extending from the point X-17 to a point marked in blue, to a point X-2, and from the point X-2 to the point X-5, or a generally northeasterly direction). From Vaughn's place there is only one way to go that I know of. That is over the little piece of new road leading to the little lake on the Mathieson ranch, through the Malloy ranch (indicating point X-5 and little Mathieson lake, commonly called the Decker or Triunfo road. From there I went out to the intersection of the Decker road and Triunfo road with the Old Ventura road. Then across the dry wash and past the Russell house and then up to the state highway to that point where the road intersects the highway at "SS" in Russell Valley, and from there to Triunfo. When I say for lack of good roads, I mean that they are bad roads either way you go from my place it is bad roads for two or more miles, either direction, to Triunfo or down Encinal Canyon to the beach.

2266 *Cross-Examination*

By Mr. Anderson:

The kind of a road leading from my place to the Marion Decker place is a very poor road. I have traveled it with a wagon. The kind of road I have from X-17 to the Marion Decker place is a very rough, hilly road, steep grade, Some of it has had work done on it. So far as the trip to Santa Monica is concerned that is the worst part of it. I leave the hill from the beach
2267 road up Encinal, almost up on the hog track. I have not been up there since the road was dynamited. It is perfectly visible from the road. That road interferred with my carrying products, in and out; that was one of the reasons that I left in 1913. I left in 1913 because I could not make a living there. That is not one of the reasons, I could not make a living. I tried to cultivate at that time enough land to get
2268 my patent from the government, about five acres. I made the last trip in the automobile, last August. That is not the first trip since 1913. Every year I went in, in other years on the same road, the Triunfo. I went through there (indicating on map, Exhibit 6), to a little distance beyond the dam. The dam is a little lake on the Mathieson ranch. After I got beyond that I went in at one time on horseback and I think twice I walked; I came that far in a machine. *I* machine I came in as far as

2269 Vaughn's place was Mr. Auld's. He has a homestead up there. That is the way that he goes in and out. That is the only time that I have traveled in his machine that far. I never have seen his place. From Vaughn's place I followed the wagon road part of the way and took the two different trails in two places to lessen the distance. The trail I walked I couldn't drive over it with a wagon. From Ramirez Canyon on east I traveled on the beach and on
2270 the mesa. I have traveled both ways. The road has always been there. I traveled it when I first went up there, and I supposed they were public roads. The old road principally followed the beach for a long distance, was principally on the wet sands and where the waves washed; and at times when the tides would get higher, it would drive up into the drifting sands and make going very difficult. And at times we would have to
2271 wait for the tide to go down to pass certain points, at one place in particular, a little to the west of Rattlesnake Point. But at all events there are a number of difficult places there, hard to pass in the old days when we had to use what we have been pleased to call the beach road.

2272 H. T. MELOY,

a witness called in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

My name is H. T. Meloy. I live in Santa Monica. My business or occupation is farming. I own a little property in the Santa Monica mountains. I own a piece of land up there, I
2273 and Mr. Middlecoff together. I observed on the map when you were describing it to Mr. Smashey. It is pretty hard for me to point out on the map where my property is located.

Q. Now, I will show you the point X-5. That is what is known as Vaughan's place, and the point X-5 is north—the Ventura line is the line marked in green.

Mr. Anderson: Can't we agree on that without having him describe it? Mr. Scotton will
2274 mark it with my blue pencil.

Mr. Scotton: It is section 3.

Mr. Anderson: Mark that 18, Mr. Scotton.

Mr. Vallee: I will ask Mr. Scotton what he has placed upon the map.

Mr. Scotton: I put a blue cross and marked it No. 18, in the northeast corner of section 3, in township 1 south, range 19 west.

The Court: Does that indicate your property, Mr. Meloy? A. Yes, sir.

2275 (Continuing). I have 160 acres, more or less. I never lived there; nothing only camped there for a month at a time. The last time I was up there was last July. The first time I ever went up there was about 12 years ago. Between the time I was up there the first time and the time I was up there the last time, to go from my place in Santa Monica to my property in the Santa Monica mountains I built a road up there.
2276 I built the road right past that little dam you are talking about; south it would be about two miles up to the ranch. When I refer to the little dam I mean the little Lake. I built that piece of road about a year after I bought the land. At any time after I bought that ranch I did not use the road southerly to the Marion Decker place and down through the Rindge ranch; there was no road there.

Q. Do you know whether or not that strip
2277 of road from the little dam at the Little Mathieson Lake to the property that you own is private or public road? A. Well, we didn't ask anybody to cut us a road through there; just built it ourselves.

I don't live upon the property at the present time; I do not make my home there. I farm there; I have had a hired man there for a year at a time, farming it. I quit farming because I couldn't get nobody to haul up the stuff and stay there. The road was so bad that you can't

2278 pull a load up. That road that is so bad that I can't pull a load up is the very one that I built. It is just a trail; that is all there is to it. I guess I am familiar with a hill called Meloy Hill, Meloy grade, I believe. I never heard it until I got here in the court room. It is just a long, winding grade around a hill and it is steep. I have tried it up there several times with a machine. I never made it, although I have heard
2279 of some machines going up. I never made it. I have an Oldsmobile and I couldn't get up; and a team is loaded when they have got 500 pounds on.

Cross-Examination

By Mr. Anderson:

I am a farmer. I have many, many years been the principal well driller of Southern California, and farming with it. I have drilled wells in that whole section, for the Rindge peo-
2280 ple as well as others. I never have attempted to use the road over the Rindge place across to my place; I knew of a trail across there, but I never used it.

C. A. MIDDLECOFF,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

I live in Santa Monica. My business or occupation is hardware. Mr. Meloy and I own

2281 160 acres in the Santa Monica mountains, less one-tenth. There is one-tenth acre cut off there where the old grant comes in. I have never lived upon that place, except one month. I took my family over there and lived there one month the first year we acquired it. I was only there for camping; never lived there afterwards. I am familiar with the road from Triunfo into my property.

2282 Q. Will you describe that road? A. The road to the Ventura county line—

Mr. Anderson: I think we can stipulate that this witness will testify to the same effect as Mr. Meloy concerning that road. I don't see a necessity of taking up any further time.

Mr. Vallee: That is perfectly agreeable to us. Now, Mr. Middlecoff, are you familiar with the road from your property down to the Marion Decker place? A. Yes, sir.

2283 I have traveled over that road from my place to the Marion Decker place and then down over the Rindge Ranch, two or three times, about five or six years ago. The last time that I remember was about four years ago. The piece of road from the Little Mathieson lake to our place was built by Mr. Davidson that took up the land and it was washed out when Mr. Meloy and I got control of it, when we bought it, and we improved that road and fixed it up about five years ago. I do not at the present time

2284 farm any of that land because we are engaged in other occupations.

BESSIE M. KAPPLER,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

I live in Santa Monica mountains, in the head of Nicolas Canyon. (Witness indicates on map
2285 and Mr. Scotton marks on map, Exhibit 6.)

Mr. Scotton: I have placed a blue X and numbered it 19 in the northeast one-quarter of the northeast one-quarter of section 19, township one south, range 19 west.

By Mr. Vallee:

That is my property. I have 160 acres there; that is my husband's property. We own it together. I have a husband and one child. How
2286 long we have lived there I could not say exactly because we have lived in and out of there. We established a permanent residence there in the spring of 1908. I was there before that. I couldn't say exactly the first time I went there, but it was in 1906 and I was there in August, 1907. In August, 1907, and in 1906, and after that, when I would go to and from my property I went by the coast route, the old road leading up Nicolas grade on the east side of Nicolas Canyon, through the Malibu Ranch. I used that

2287 road off and on since the spring of 1908 and also in 1907. The last time I used it was in April, 1917, a little over a year ago. The reason we stopped using it was that we could not get through the Malibu any more. After that, for a while we went through Triunfo and from Triunfo post-office over a trail, part road and part trail, to our house. The road past Meloy Hill and Vaughn's and over that way into Los
2288 Alisos. Of the 160 acres we farm between 15 and 20 acres, I don't know exactly. We have cattle. Mr. Malden's and ours run together; I couldn't tell you how many we have without referring to the book, but in the herd there are 11 or 12 head. Mr. Malden is our nearest neighbor; he is sort of a foster brother of mine, and a partner and associated with my husband in business; he has a place next to ours.

Cross-Examination

2289 By Mr. Anderson:

The last time I was through the ranch was in April, 1917. I could have gone through up until the gates were closed; I don't remember making a trip or attempting to. The road down the east side of Nicolas Canyon in places is steep and rough, and other places it is a good road. That April trip was the last time I went up Nicolas Canyon. That was the only one of the roads which I used.

2290 Q. When you got down to the old road, how did you go along the beach? Did you go substantially along that black dotted line shown on the map on the southerly part of the map, dotted in black, Nicolas Canyon? You will see there is a dotted line running across the ranch. Is that substantially the route which you took? A. Especially coming down. I don't remember much about going up, but we kept to the beach, but sometimes we went over the mesa, but I
2291 don't remember doing it then.

Q. As a matter of fact, during the entire time you traveled over it, it was upon the beach itself? A. Well, you know there are so many different ways that you can go. There is Nicolas Canyon, just here, and then we crossed a canyon, Little Alisos, just beyond Lachusa, that is marked Nicolas on this map (Exhibit 6). Then we come to Lachusa Canyon where there
2292 is an alfalfa field and where the old adobe house used to be which was the old Lachusa residence. We took a road close to that house, coming down into the canyon, and there was a bridge. Before the bridge now there was put up, we came down practically where the alfalfa field is; down on a bridge and up again and across the mesa until you come to Encinal Canyon. I remember Encinal has a road running up the hog back. After we left Encinal going about a half a mile there is a steep turn

2293 down the beach. That is horseshoe bend. After we got down the road from there until we got to Zuma Canyon, I have traveled on the beach when the tide was low, and I have traveled up close to the hills on a sort of a road, and also over the mesa. I had permission to go through. The ordinary road was that road below the bluff. We never claimed any right to travel the mesa road excepting by permission. When the tide was out and we could get on the
2294 beach and sand we preferred to travel that way. And when the tide rose it drove us back into the sand. There was a sort of a road there. Then we crossed the Dume mesa, over a road that has been there for a long time, the old road, which at one time the county claimed to be a public road. When we got across the Dume mesa, we went across where the trestle is and sometimes we went across the mesa from Ramirez to Lat-
2295 igo. We claimed the right to travel the mesa without permission.

Q. Didn't you understand that at some time about 1913 the court—or some time about 1910, the court decreed that road across the mesa was a private way but the road along the beach was public? A. I confused those decisions. I think one judge decided it was a public road and one decided it was a private road. As to whether the gates were locked or not locked we crossed it when we could anyway. As between the mesa

2296 and beach road from Ramirez to Latigo we preferred to travel the beach road. When we could we traveled the beach road.

Q. Then from Latigo clear on to the Malibu, most of the way was on the beach with occasionally parts of the road up on the dirt? A. No sir, the first road, I remember distinctly traveling over very good road at points.

Q. You crossed the points on a good road?
2297 A. I mean back from Latigo to Pasqual Canyon, what is known as the rocks in there. Part of the way we traveled on a dirt road and part of the way on the beach. I do not remember that that road which I *was* was a good road was the old road built by Mr. Darlington. I don't think the Rindge Company people built it. It was constructed, it was a worked road, in places good, places bad. The last years I traveled it was a better road than it was some other years.
2298 I remember a time when there was trouble about using the new road on the ranch. There was a lawsuit between Mr. Fitzpatrick and Mr. Richter; I remember about that.

Q. During that time or just before it was necessary—isn't it a fact that the beach road, that part of it which was on the beach, had become very much neglected and worn out? A. I don't remember that year more than others. After the Spring rain the road is bad and then later on each one fixes it up and it gets better.

2299 It would be a better road in the Fall than in the Spring. From my place to the Charlie Decker place which is shown on the map as X-3, which is below the figure 20, to now get from my place to that place we have built a road within the last year, a very poor road but we can get over it. We can get through with a horse and wagon. The amount of a load we can carry is very light; not over 500 pounds. It doesn't
2300 go to the Decker place at all, but we have built a road into Los Alisos Canyon and Deckers have a road into Los Alisos Canyon.

Redirect Examination

By Mr. Vallee:

Q. How far is it from your place to the place where your road meets the Decker road? A. About a mile and a quarter. It is over a mile.

M. A. VENNAMAN,

2301 called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

At the present time I live in Santa Monica. I own property in what is known as the Yerba Buena settlement a little distance north or west of the line between Los Angeles county and Ventura county, 160 acres, more or less. My occupation is farming.

2302 Mr. Anderson: Now, if the court please, this testimony is on this Yerba Buena district and we wish to have it understood that our objection goes to his testimony.

Mr. Burnell: The same objection may go as was made to Mr. Richter's testimony.

Mr. Anderson: It has been made to all of the Yerba Buena testimony.

The Court: Same ruling.

(Exception No. 40.)

2303 By Mr. Vallee:

I have been a farmer all my life, practically, about 35 years. I own in the Yerba Buena district 160 acres, more or less.

Q. Now, I will ask you to step to the map and show us where your property is located. You have been in the court room and heard the map explained, have you not? This is the Yerba Buena settlement inside of the line here. A. I 2304 am in section 11 and I own the west half of the northeast quarter and the south half of the northwest quarter of section 11.

Mr. Burnell: Now maybe we can have Mr. Scotton mark it on the map. I will ask him to put it on there. I don't know what we would do without having Mr. Scotton to mark this map.

The Court: We will have to have him marked as an exhibit also. Has it been prop-

2305 erly marked, Mr. Vennaman? A. Very near, within a short distance.

Mr. Burnell: For the record, I will ask Mr. Scotton to kindly state what he has marked and how he has marked.

Mr. Scotton: I have put a blue X on the portion of the property owned by Mr. Vennaman and marked No. 20, at a point right where his house is and those marks so placed are in the north one-half of the north one-half of section
2306 11, township one south, range 19 west.

(Continuing). About ten acres of this 160 acres is in cultivation to peaches, apricots, blackberries, a few grapes, barley, beans and garden stuff, and a general garden. The ranch is being worked at present. My neighbor, Mr. Roy Lane, is working the place for me. I filed on that place August 2nd, 1911. I have lived there; I moved up there in January, 1912. I brought
2307 my family down about the 23rd of July, 1917. As near as I can remember it, the owners of the Malibu Ranch closed the ranch to travel about August 13th, 1917. It was before that that I brought my family down; it was before the gates were closed. I came down with my family through the Malibu Ranch. Previous to that time I had made my trips back and forth to my ranch through the Malibu Ranch. I brought in my supplies and provisions, and farming implements through the Malibu Ranch on the coast

2308 road, and also other things needed up there. Since the time the Malibu Ranch has been closed I have been up to my Yerba Buena ranch. I came down one time after the ranch had been closed with a through permit on the 16th of August, 1917. I was with the party of whom Mr. Richter and Mr. Fitzpatrick were two, as testified yesterday, coming through the ranch and breaking the gates. My object was to get
2309 provisions for my wife and children. My wife and children would have been suffering for lack of provisions in a few days when I took the trip. There was no other road or trail, or other means by which I could get into or out of my property. I heard the testimony of Mr. Fitzpatrick. I heard the testimony of Mr. Richter. Previous to the Malibu ranch being closed to travel I got down to the coast road over the Mondell road. I came down the trail down to the Mondell road
2310 and I followed the Mondell road then on around down to the beach road, the coast road, as we call it. From there on through the Malibu Ranch. I was over the Mondell road and the road with which it connects up to the Ventura county line before the closing of the gate, a good many times. During none of these trips did I ever find any gates across the Mondell road or the road down to the Ventura county line. No one ever prevented me or attempted to prevent me from passing that road. The road

2311 I call the Mondell road and also the road traveled to the Ventura county line were commonly and usually traveled by the public in that vicinity. So far as I know, it was an open road. At the present time my place is situated from the nearest open traveled road of which I have any knowledge about 12 miles. That is the state highway. The means of communication between my place and the state highway is a trail; it is known as the Triunfo Pass, traveled in
2312 a northeasterly direction up into and past the Little Lake and through the Mathieson ranch and the Russell ranch, and hits the state highway at Triunfo post-office.

Mr. Anderson: Can't we stipulate that that is the same trail testified to by Mr. Fitzpatrick?

Mr. Burnell: Yes, and by Mr. Richter.

Mr. Anderson: By Mr. Fitzpatrick and by Mr. Richter.

2313 Mr. Burnell: Witness indicating on Defendant's Exhibit 6 the same trail which was testified to by Messrs. Richter and Fitzpatrick, in testifying as to their means of access from Yerba Buena settlement to Triunfo post-office.

Mr. Anderson: So stipulated.

Mr. Burnell: Now, I wonder if you will also stipulate that his testimony as to the character of that trail will be substantially like the other two witnesses?

Mr. Anderson: Certainly.

2314 Q. Why did you move away from the ranch? A. Well, I took my family out in the first place because my wife became sick, with the intention of moving back; but when the gates was closed it was impossible for me to get my family back in and make a living.

Mr. Burnell: Was there any other reason besides your wife's health?

Mr. Anderson: Object to that as cross-examination.

2315 The Court: Overruled.

A. At the present time there was no other reason.

Mr. Burnell: Now, did you at the time that you left—did you or did you not leave with the intention of returning? A. I left with the intention of returning within a few months.

Q. Why have you not done so?

Mr. Anderson: Object to that as immaterial.

2316 The Court: Overruled.

(Exception No. 41.)

A. Because there was no way to get there.

(Continuing). Oxnard is the closest physician to Yerba Buena settlement that I know of. There used to be a road to Oxnard, as has been explained, through the Broome ranch, but they have closed that. That is the same trail or road that was testified to and described by Mr. Fitzpatrick, and the Broome ranch is the ranch that is sometimes referred to as the Guadalasca

2317 ranch. I have traveled over that trail to Oxnard horseback. At the time I left the Yerba Buena settlement there was between 70 and 80 people living there.

Cross-Examination

By Mr. Anderson:

I have a sled trail from my house down to the Mondell road. My house from the Mondell road is between three and four hundred yards. When I say "a sled trail" that is not a trail that
2318 I can take a wagon over; it is a trail that I take a sled and team over. I have not a wagon road from my house to the road. After that three or four hundred yards, from that point I have a fairly good road to the beach on the Mondell road. The highest point in the road is probably fifteen or sixteen hundred feet. From the beach to that 1500 or 1600 foot point is, I judge, about three miles. That grade is not as
2319 steep as the Triunfo at present. We don't travel the Meloy Hill. The grade on that Triunfo road that is steeper than the one I have on the Mondell is just below the bench mark.

Q. You misunderstood the question I asked you. I asked you after you came off that brush trail and got on the road, how does the steepest grade on the Mondell road compare with the grade on the road after you leave the road into the Triunfo? A. Well, the Mondell is a little more steep in places.

2320 Q. How far from the bluff to the north did you cross the Ventura county line on the old road running through the Rindge property? A. Well, I should think it was between 150 and 200 yards. So far as I know, that road was there all the time I was there, and there never has been any other, so far as I know. That is the road that was there the last time I passed over it. I last saw that road August 16th, 1917.
2321 And that road was then in the same place. I was one of the defendants in that case of Rindge Company against Fitzpatrick and others, and was served with the various affidavits, summons and complaint, including two of those blue maps, such as that on the board (Exhibit 12). On that occasion the first obstruction I met was a locked gate at Lechusa. After some altercation with the foreman of that camp at the time, they called him Shorty, we went through.
2322 It was not coming down that Fitzpatrick shot the lock off; I mean going to Santa Monica; he shot the lock off when we were going back. On that trip to Santa Monica there was a high post above the bannister, and we cut that off and threw the panel of the gate. We cut the high post off and got through that way. At that time the bridge had not been partly removed. I did not see any automobile there; I did on the second trip when we were coming back. It was on that second trip going back that the lock was

2323 shot at. I couldn't say as to whether he hit it. Besides his shot at the lock, the chain was cut. I was not at the gate at the time; I was watching the teams. That is the bridge right up next to the little guard house there, the Lechusa bridge. In the old days, when I traveled the road, there was no bridge. We crossed down in the creek; and that was over an old road that went through where the alfalfa field is now; and
2324 after a while the road was built clear up to the bluff and this bridge put across it. And that is the bridge that was there the last time I was over there, and the gate was on the westerly side of it. We traveled without obstruction coming down so far as I know, all the way through. I never broke another gate coming down; I didn't keep up with the party; there was some of them went on ahead.

Q. Some of them went on ahead. Now,
2325 calling your attention to this map exhibit 12, calling your attention to Ramirez Canyon which is at the extreme westerly edge of the map, I call your attention to a road indicated in red and to the north of the road, a road indicated by white dots to the side. That is the road you crossed on the trip going? A. On the white dotted line.

Q. Which did you travel coming back? A. On, the white dotted line. From that point when we got to the easterly side of Ramirez

2326 canyon we took to what is known as Ramirez mesa. I was not aware at that time that that road had been declared by the court to be a private road; I was not aware of the fact that the road on the beach from Ramirez to Latigo had been decreed and held to be a public road while the one on the mesa was held to be a private road. When we got to the point just above the letter "S" turned on the top of the mesa, just west of Latigo, we found a gate there on
2327 this first trip; it was open when I saw it.

Q. Which did you pass on from that point on to the point on this map (Exhibit 12) just below the words "li" in the word "Malibu," which did you pass on the road in red or the white dots? A. The road indicated in red. I did not find any locked or shut gates when I passed through. They were all open. Our party had been on ahead. The road in red had gates
2328 at either end, two or three gates across it, as we traveled along and it was fenced on the ocean side in places; it was fenced on both sides in some places. At the point below the word "Sosto" there were four gates, two across the road and one at the canyon and one at the beach. Those two gates were closed. The others were open when I passed. It was fenced at that point, and it was so fenced excepting where natural obstructions rendered a fence unnecessary, so that we could not leave without getting off the

2329 road. I remember the strip of road at the mouth of the Corral canyon; over which a bridge had been built at that time; I passed over that. There was a gate at that point. It had been open before I got there. I rather believe that little piece of road was fenced.

Q. Now we come to the third piece of road or the fourth piece of road under the word "Sequit" near the east end of the map indicated in red, the road goes out on here, ending in a
2330 fence, all along the way, wasn't it? A. I think it was. I found the gates open when I traveled it. I did not at any of those points travel on the beach road but I traveled on the roads indicated by the red. They were all new roads. There was some places I had traveled them before, but they were fixed over, where I had driven up on the railroad right of way and on the tracks. All of that was not a part of the
2331 beach road, it was simply the railroad track where the ties laid, excepting those two places where I had been pulling up and driving on the ties of the railroad in high water. I found entirely new roads where the road went over this way (indicating on map, Exhibit 12). I don't know of my own knowledge who built the roads. When I came back from Santa Monica I saw gates along on that line locked. I saw them opened; from Corral canyon to this last section of road, I opened some of them myself with ply-

2332 ers and picks and a cold chisel, in some instances taken off the hinges and in some instances they were cut through with clippers.

Q. Explain why you came back from Santa Monica, going eastward, you didn't travel on the old road, the beach road you were accustomed to, rather than breaking through the gates. A. We had broken the gates once and it was high tide and we did not want to sacrifice
2333 our horses. I had time and time again driven on the beach road when there was no road at this point. It was no greater a sacrifice to drive them there on this occasion than on others. We did not want to sacrifice them any more than we had, so we broke them.

Q. Then, as a matter of fact, the only reason that you had so far as you were concerned for the breaking of the gates on the return trip, was for the personal convenience of yourself
2334 and others, to save the people with horses from putting them to the extra pull; isn't that a fact? A. From Escondido Canyon.

From Escondido Canyon on we broke no gates; what gates we did break we broke for that reason. When we got back to Lechusa we found the Lechusa gate locked. That is the occasion when Mr. Fitzpatrick used his weapon and shot off the lock. He used a rifle. On this occasion I don't know how many of our party had arms; there was two or three that I know

2335 of; I did not. The condition of the bridge when we got back was there was several boards out of the floor and there was a long chain wrapped across the eastern end three or four times, and a padlock. We went down to what used to be the old road where there was a small bridge and took up the floor of the old bridge and carried it up on this bridge to Lechusa canyon. I don't think there were any threats made at that time
2336 with reference to burning the bridge or any part of it. I didn't hear any.

Redirect Examination

By Mr. Burnell:

I am acquainted with that point on the trail leading from Yerba Buena settlement to the road that takes you into Triunfo post-office which has been testified to as too steep for a horse to carry a man over it. That part of the trail is much steeper than any part of the Mon-
2337 dell road.

MARIE LA FOUDE,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

I live on section 17 in Ventura county, over the Sycamore canyon in Ventura county. I am in the section here, in this section, the second section in from the ocean and I adjoin the

2338 Broome ranch on the west side. The point that Mr. Anderson and you have marked with the cross and the figure 21 is approximately as near as you can determine from the map, the position of my property. I own besides that, 120 in section 14 that joins Mr. Fitzpatrick. In the section which Mr. Anderson has marked, we have not the title to that but there is 158 and a fraction acres. We are occupying it. There is a little bit but not very much cultivated,
2339 but there is about 20 acres ready to cultivate this fall. I live there. I have five children and take care of three others. I have a husband. He does not reside there on the place. My property adjoins the Fitzpatrick property. (Identified by the cross in green and the numerals 15). My property lies east of his. The location that your pencil now rests on which is to the east of little Sycamore Canyon is about right. (Marked with
2340 a blue cross and the figures 22). That, as far as I know, indicates the position of my other piece of property. In getting into or out of my property I travel up Sycamore Canyon to the head of Mr. Ed. Borcher's place. I have heard the testimony of Mr. Fitzpatrick and Mr. Vennaman.

Q. I will ask you, Mrs. La Foude, if the road that you travel is the trail approximately as described by Mr. Fitzpatrick and Mr. Richter, I believe, and shown by the dotted line—the

2341 curved line running from the heavy dotted line up into Sycamore canyon and thence up Sycamore canyon and then you come to a yellow line, marking part of the road and then follow the heavy dotted line up Sycamore canyon? Is that about the way that you refer to? A. Well, I don't go down that dotted line at all. I go up Sycamore right here where this joins the Serrano Canyon, which is marked on the map. I
2342 start from my place, 21-X, and come down, following the hill right down, approximately west, to the point that is marked by the circle which has a little cross in it, or thereabouts. That takes me to Sycamore canyon. Then I go up to the head of Sycamore Canyon, approximately on the trail described by Mr. Fitzpatrick and Mr. Richter, and marked by the red dashes going up Sycamore Canyon. Then I go through the Borchard place and up to the old highway
2343 to Newberry Park; that is on the new highway.

Q. How do you get to the old highway as shown by the line indicated leading west to the new state highway, indicated by the heavy black line? A. I am not certain of the road, but from Mr. Ed. Borchard's ranch, I come out here, I think, and come back this way, and follow this way (indicating on map); follow the old Conejo road, partly.

Q. I note on the map here, Mrs. La Foude, a road which has not been colored yellow, but

2344 which is indicated by a black line running northerly from the old county highway to a point on the map a little south of the present state highway, at which point it branches, one branch going northeasterly towards Conejo mountains marked on the map, the other going easterly and then northerly, and intersecting the state highway at a point just below the letter "A" in the word "Valley" in the phrase "Conejo Val-
2345 ley." Now, did you take one of those branches? A. Yes; the one that goes up this way (indicating), and from there I travel west; and then I go to Los Angeles or Santa Monica and travel the state highway. To go to Santa Monica, I have never come in excepting on the stage, and I leave the state highway at Cahuenga Pass. The stages run to Los Angeles, but in going up we have to go into the city all the way, using the stage.

2346 Mr. Burnell: Now, gentlemen, I wonder if it is possible to stipulate that the trail or road described by Mrs. La Foude from the Yerba Buena settlement, her place there, up to the point where it runs into the old highway—that her testimony would be the same as that of Fitzpatrick?

Mr. Anderson: Excepting that portion from her place to the point marked circle X.

(Continuing.) The nature of the road or trail beginning from my place at X-21, and just tak-

2347 ing you to Newberry Park, there is a very steep hill on that side of Sycamore, but after we reach Sycamore, it is comparatively level, with the exception of where the waterways are washed, and they are very rough. From my place to the point marked X with the circle around it, it is not a road or a trail either. You just go up any place at Sycamore. There has been wagons taken over it, but I would not ride in them. It
2348 is not a practical wagon road. When I leave my home in Yerba Buena and travel over that way I ride horseback. The road from the point marked by the cross with the circle around it, and from there on up to the head of Sycamore Canyon, is a pretty level road with the exception of the waterways. The water has washed out about a foot and a half to about four feet. Wagons have traveled it part way. It is not a regular wagon road. It is not a road on which
2349 any work appears to have been done, grading or filling in. When we get up to the head of Sycamore Canyon they start up a grade there. At first it is very steep. It is in a small canyon, and after they get to the head of the canyon it is very, very steep. I saw them on the road. My son has tried to take a loaded team over that road. I was with him. He had two horses. He locked the wheels coming down, and going up he came up empty. Coming down he had about 7 or 8 boards on the wagon with him.

2350 about 10 feet long, 1 by 12. We had to lock the wheels even if the wagon was empty. That takes us up to the old state highway. From there across to the new state highway there is a road, a pretty good road, a wagon road. There is another means that I know of by which I can get into or out of my place in the Yerba Buena settlement. I follow a trail over into the Yerba Buena settlement proper, and from there I follow the trail that Mr. Fitzpatrick and Mr.
2351 Richter have described. I have heard the description of the trail; I rode on it once. It took me an hour and a half to ride three-quarters of a mile. My description of the road there in general is the same as the description of Mr. Richter and of Mr. Fitzpatrick. I have not always gone that way. I first came in by the coast road, Malibu Ranch. The last trip I made over that road myself was in April, 1917.
2352 At that time it was open. I have not been over it since. I couldn't get through it because the gates were closed and they didn't allow traveling over it.

Q. Now, at the time you went through this Malibu Ranch, will you please tell us how you came from the Yerba Buena settlement to the end of the Malibu Ranch at the Ventura county line, the point indicated on the map Defendant's Exhibit 6, by the intersection of the red line running along the coast which represents the

2353 proposed new highway and the heavy black line composed of long and short dashes, which line is just to the east of the green line indicating the boundary between the two counties? How did you reach that point from the Yerba Buena settlement proper? A. I came over the Mondell road.

I have heard the description of the witnesses Richter and Fitzpatrick and Vennaman of the Mondell road, and of the road that has been
2354 referred to as running from the county line to the Mondell road at about the point marked 16. That is the road I refer to as the road by which I came to the edge of the Malibu Ranch. I have made four trips over it, round trips over that road. On none of those occasions did I find the road closed. There were never any locked gates over it, except there was at Lachusa a locked gate, which a man came and opened.
2355 On the road outside the Malibu Ranch and lying easterly of the boundary in Ventura county, I never saw a gate, no trouble as far as gates are concerned. Their sheep herder set his dog on me once. That was coming down this road in Ventura county. That was just the act of the sheep herder. That road was used by the public generally and it was an open road, as far as I know.

Mr. Newby: You are speaking now about the road west of the county line?

2356 Mr. Burnell: Yes, the road from the county line west in Ventura county, the Mondell road, and the other road referred to as the Marion Harris-Jasper Thomas road. How far have you got to go to reach the highway or public road at the present time? A. At the present time you have to go fourteen miles to reach the state highway.

Q. What is the nearest point to your place, 2357 referring now to the place marked with the cross and the figure 21, adjoining the Guadalasca Ranch—what is the nearest point to that place to which you can drive a loaded wagon? A. The canyon you mean?

Q. I mean from any point outside, coming from Santa Monica or Los Angeles or Oxnard or any other town. How near to your place can you take a wagon load of merchandise or anything of that sort? A. You couldn't take more 2358 than three or four hundred pounds at any time, and I wouldn't call that a wagon load.

Q. How near can you take your wagon load of three or four hundred pounds? A. To the foot of the hill, by tying the wheels and going down the grade; that is, the point that my son went down with the wagon. To get from the property marked 21-X to my property which is marked 22-X, we follow a crooked horse trail past the corner of Mrs. Rindge's place, and then pass Mr. Richter's place down into the Yerba

2359 Buena Canyon. There is a store at Newberry Park. It is a small grocery store, not carrying a great supply of anything, and no dry goods or hardware can be bought there that I know of. The nearest point at which there is a store at which I can buy dry goods is, I believe, at Camarillo in Ventura county. You can not buy everything at Camarillo. We have to go to Oxnard or Los Angeles.

Cross-Examination

2360 By Mr. Newby:

I went up there to live in August, 1916. I am still living there. When I went in, I went in over the old coast route up over the Mondell road, and then over a trail. In traveling over the Malibu Ranch I used the road indicated by the black dotted lines on the beach, the beach road. I entered the road connecting with the Mondell road at Sequis—we went in over the 2361 beach and then followed the dotted line up to the road marked—we went in off the sand at Sequis. Then we traversed the mesa until we crossed the county line and then into the Mondell road; that was in 1916. I used the road since I have been up there four round trips from my place to Santa Monica and return. I used the same road each time excepting once when I tried to go around Point Dume. That is a straight up and down cliff; it was low tide. It was not possible for me to get around. I climbed

2362 up the west side of the point. I didn't go back to the road, I walked up and down the ravines until we got to the high bridge. I was walking. the wagon was on the road, but I tried to walk around. My boy was driving the wagon. I found it to be impossible for a person on foot to get around Point Dume on the beach at that time. At no other time did I attempt to make a rounding, never attempted it again. The tide was low at that particular time. I didn't at-
2363 tempt it again for the reason that I had never heard there had been any improvements around Point Dume, and having had one experience I did not try the second time.

Q. Now, after you reached the extreme west boundary of the Malibu Ranch on the Ventura-Los Angeles county line, how did you reach the Mondell road? A. All mountain grades are steep to me. I am not accustomed to them.
2364 This was not especially steep, not so much as others. There is another that is steeper, the other side of the Triunfo Pass on the Triunfo trail. A place marked Triunfo Pass on the map (Exhibit 6), going toward the state highway, is very much steeper, steeper tha the Mondell road. The length of the grade about three-quarters of a mile, I think. The length of that on the Mondell grade is about three miles, I should think, the way it is traveled. At no time since going to the Triunfo country did I make

any application for a permit to go through the Malibu Ranch. I don't think I could do it after the gate trouble, although I had nothing to do with that. I never made any application. I assumed that it would not be granted, and I knew I could not break any locks. I never knew that a permit had been granted to anybody. Different parties told me that they had applied and had been refused; among them was Mr. Parks. I did not know that Mr. Vennaman had received a permit; I don't think so. I didn't know that.

Q. You stated upon your direct examination that there was a certain hill beyond which you could not take a wagon, towards your house. Can you locate that hill and give us the distance from your house? A. It is about three-quarters of a mile up the hill from Sycamore Canyon and I live above it. From my house it is northwesterly—my house is at the northeast part of the hill. It is between my house and Sycamore Canyon. That is about three-quarters of a mile from my house, from the top to the bottom of the hill. From my house, coming from either Oxnard or Triunfo or Newberry Park, to take in ordinary supplies, we have to make about three trips with the wagon. From Newberry Park we could take a wagon to the bottom of this hill that I live on. That is about three-quarters of a mile up the hill to my house.

2368 The bottom of the hill from my house is about one-eighth of a mile. I am right on the top of the hill, so that the supplies could be taken to the bottom of the hill and my house is located on the top of the hill; you have to travel three-quarters of a mile. Up to that point at the bottom of the hill an ordinary two-horse wagon could haul, without unloading about 400 pounds. If I started from Newberry Park I can bring
2369 up about 13½ miles to my house and if I start from Newberry Park with 400 pounds I can do it. Going toward my house I could take to this point indicated, as three-quarters of a mile away, 400 pounds. We pack up the rest of the way on horse-back. Work has been done on that road from my house to the bottom. My son, Mr. Fitzpatrick and Howard Plat did that work. The character of the country is such that a road could be built there. Going from
2370 my house toward the Mondell road the character of the country is rough and rocky and there is not so much grade until you come to Richter's place and then it is a short grade. From my house to Richter's is about two miles. The length of that grade is about 25 feet, I think. I don't know the grade for that distance; it is not very steep. It is not a wagon road. There is no wagon road there; I am the only person living up there. From Mr. Richter's going toward the Mondell road is down the hill and up again

and it is not a very long hill. I have traveled both ways to get to the Mondell road. I have gone down the coast and over the Yerba Buena. The distance from my house to the Mondell road, going by way of the Yerba Buena settlement, is about three miles. The general character of the country is hilly, just as I described it; no roads there, just the trail. At the point where I intersect the Mondell road going by way of Yerba Buena settlement, is distant from the beach more than three miles by following the regular Mondell wagon road; that is not quite as steep. I have attempted to carry a wagon-load of merchandise up the Mondell road; I had about 700 pounds. I was able to take up 700 pounds with two horses. Coming down the hill I had to lock the back wheels; I did not drive any load down. I had to lock the wheels, using the brake. With reference to the Mondell road I don't when it was put in. From the Mondell road to my house there is no wagon road. I drove it in from Yerba Buena settlement and then went by trail to my place. From the point where I unloaded to my house is about three miles. That distance I had to pack it. It is about 14 miles from my house to Newberry Park. From my house to Santa Monica by the beach road is 37 miles and by the State Highway 75. I have a daughter living in Santa Monica. I have been to Oxnard; I

went through Topango Canyon and up to Oxnard. I did not go from my house in the mountains to Oxnard. Oxnard is a city of some size, if we could get to it; a lot of stores there. With reference to the waterways which I said at times interrupted us, they are over in Sycamore Canyon. They are up all the time, there has been no work done on them. When the settlers went down there to do some work they notified us that we could not use that road any more. Those waterways were in Sycamore Canyon, they run back and forth from one side to the other. Mr. Reed of the Broome Ranch notified us; so no work has been done on them. He notified us to keep off after April 15, 1917. We have been going out that way but not the way that he would see us. We had to get out some way.

Redirect Examination

By Mr. Burnell:

I moved into Yerba Buena in August, 1916. That is the time I went to live there. Since 1914 I owned that 120 acres. Coming down the Mondell hill I meant by the brake that I would lock the wheels, or you can use a chain. Coming down the hill into Sycamore Canyon the wheels had to be chained, coming into the Broome Ranch.

2377 Friday, October 11, 1918.
10 o'clock a. m.

(Stipulated jury present.)

Mr. Newby: Now, if Your Honor please, we reserved the right to call Mr. Patton. He is now here and he ought to go back to the ranch this morning.

Mr. Burnell: There is no objection to that at all.

2378 J. C. PATTON,

recalled for further

Direct Examination

By Mr. Newby:

I am superintendent of the Malibu Ranch. I have had occasion to observe the different kinds of fences on the Malibu Ranch. At the eastern line of Los Flores Canyon, we have 52 inch net wire. We have one two barbed wire
2379 portion, above that, and other portions only one barbed wire. I believe part of it is only one and part of it is two above the net wire. That is what we call woven wire; we have wire 52 inches high, with two strands of barbed wire at the top; it makes it about 6 feet. And we have, around Malibu camp, three and four wire fences around the fields; around the alfalfa we have woven wire, approximately 27 in., possibly 30 in., with a number of barbed wires, three or four, above that. Around the pasture it is a three

and four wire fence. Most of the wires are three and four, around the barley fields and the open fields, and three and four and sometimes six wires around the various fields for stock. The kind of posts used are most split redwood posts, 4x5, seven feet long. We usually dip them in a coal tar solution, or oil, or something to preserve the part that goes into the ground; about 30 to 36 inches. Above the ground that preparation extends usually six or eight inches. My observation with reference to the barbed wire fences turning stock, and how many wires it takes for that, is that it takes five or six around the field and we have had considerable trouble on this ranch and others where I have been with regard to turning stock from a green pasture into a dry field, it requires not less than five wires well stretched and stays between the posts, and I find on this ranch it is necessary to strengthen the wires all along as the fences are not always sufficient to turn the stock, and we are working on it as fast as we can and rebuilding the fences and putting up better fences. Where there are hogs we have to have different kinds of fence, woven wire net wire fence. It must be high enough—not less than 26 or 30 inches, and if it is that high it must have barbed wire four to five inches above, well stretched. I am familiar with the entire line of this proposed highway through the Malibu Ranch from

2383 east to west. I am also familiar with the road running north and south at Little Alisos Canyon, and the road running to the beach as proposed. Assuming that those roads are constructed in the manner indicated on the map attached to the several complaints, in my opinion, it will be necessary to fence the entire right of way on those roads. It would require a hog fence. At Lechusa Canyon we have a hog
2384 ranch. There is an alfalfa field there and often in the fall of the year we turn the hogs out, and in that case to protect them from the highway there would have to be a hog fence to protect them from the public road. By "hog fence" I mean the kind of fence that I have described with the woven wire at the bottom and at least two strands of barbed wire at the top. The two strands at the top are necessary to turn the cattle and horses; they would have to be suf-
2385 ficient to turn the horses, hogs or cattle, as they all range on that part of the ranch. On the Malibu Ranch at the present time there are something about 1100 sheep. This fence would be necessary also to turn sheep; a hog fence would turn sheep.

By the Court:

They are raised on a particular area of the ranch. In this portion of the country just spoken of. That is usually our sheep ranch at this season of the year, the summer season,

2386 and they are at present right in this neighborhood.

By Mr. Newby:

There are something over 100 cattle at the present time on the ranch and of hogs about between 400 and 500; of horses and mules about 180; something like 180. The hogs at present are around Zuma Canyon, with the exception of a few at Malibu; but this location we have just spoken of is also a hog ranch, and we have

2387 accommodations for hogs at Lachusa.

Mr. Newby: That is all. Of course, Your Honor, we expect to recall Mr. Patton, but on other issues.

Mr. Burnell: We will stipulate that we are not going to object to the recalling of the witness for other purposes.

Cross-Examination

By Mr. Burnell:

2388 The fence at the eastern end of the ranch is described as 52 inches of woven wire netting and barbed wire on top.

Q. Is that fence for the purpose of turning livestock as much as for the purpose of keeping the people out? A. Yes, sir. We have not continued it owing to the lack and scarcity of help. We have not continued it as we intended to, but we have the material.

That fence was built across that end of the ranch some time last summer; I don't know just

2389 the date; possibly in August; some time last summer. We have the material to continue the fence on to the east line, to the northeast corner. The fence at the eastern end of the ranch has been extended beyond the beginning of Las Flores Canyon, possibly a quarter of a mile, a quarter of a mile up Las Flores Canyon from the beach. Beyond the part where the fence terminates, there is no fence at the present time. There are no hogs on the eastern end of the
2390 ranch, and no sheep at present.

Q. Isn't it a fact, Mr. Patton, that the fence at the end of the canyon was not only for the purpose of turning livestock, but also for the purpose of making a barrier to prevent people coming on to the ranch? A. I am not able to say. My instruction was to build the fence, to use it for a winter range for the sheep, and to put up a fence for the stock that would turn
2391 the stock. For what other purpose, I don't know. There is nothing at the present time to prevent the stock going around the end of the fence in Las Flores Canyon and coming out the road there, at the end of the ranch. That fence was built, I believe, in August last year. Previous to that time at the eastern end of the ranch there was an old barbed wire fence, along about the road. I don't know how far it extended. It was not kept up in shape. It was barbed wire on posts, but I don't know how far

it reached. The barbed wires we had before the present woven wire fence were three; two above and one below the woven wire.

Q. I believe you told us that in your opinion the proper fence to turn hogs consisted of woven wire from the height of 26 to 30 inches and then two strands above. A. I stated that that is the kind of fence that we are using, but it is not my idea of what should be used. I do not find that it is successful, because the hogs jump over it, and go between the first barbed wire and the net wire, and we have considerable trouble with them. If it is put up so that the wire is tight it will obviate that while it is new; as the fence gets older it becomes slack; that is true of any fence, that it becomes slack, but a substantial fence of the proper height does not give the gaps and vacancies which a low net wire would; net wire sags down and leaves vacancies between the posts.

Q. Do you mean to tell us that a hog will jump a woven wire fence 26 inches high? A. There is places where the washes come down there and it builds up and it leaves a vacancy between the barbed wire and woven wire and hogs will force their way through it. It would be on account of the action of the elements in building a bridge for the hogs. Some of the hogs we keep at Malibu and some at Zuma at the present time, but at Malibu and Zuma and

2395 Lechusa it is all built for hogs. We keep at Malibu 15 hogs; at Zuma about 420. We do not keep any at Lechusa. At the present time we keep the sheep in the neighborhood of Lechusa but we used to bring them to Malibu in the fall and winter, we did last year and intend to this year. We keep cattle and hogs and sheep on the same portion of the ranch running together; they are at the present time; horses,
2396 sheep and cattle. We keep one herder with the sheep, no herders for the cattle, only line riders. The purpose of the herder is to keep the sheep together and keep them from animals, and we have sheep in the hog pens at Zuma the year around.

Q. You said it was necessary in order to turn the hogs and sheep to have a woven wire fence, with woven wire 6 ft. high? A. No sir, not necessarily, but it makes a more substantial
2397 fence.

Q. I suppose if you had a fence 18 feet high it would be still more substantial? A. I suppose so. My past experience with stock has taught me that you cannot build too good a fence for stock as a cheap inferior fence causes more trouble and damage than the expense of putting up a good fence. As fast as we can, we are building at the present time, on the ranch, good substantial fences which require less attention to turn stock.

2398 I have been in the farming business and incidentally in the business of taking care of cattle and horses also, for a good many years, and under conditions that are similar to those on the Rindge ranch. From my experience in that line, and as a farmer, the type of fence that is usual and customary on cattle ranches and ranches where there are sheep and hogs is a net wire fence. That is the fence that is usually used; it is the most successful fence that is in
2399 use accordingly as the ranch has hogs. But where there are no hogs it is not customary to use woven wire fences to turn cattle. We have used a five wire fence with a post well set and close together with stays between, and that is considered a good stock fence for horses and cattle.

Q. You were asked by counsel a question as to the necessity of fencing both sides of the
2400 road. I want to make sure that I understood your answer. You answered that it would be necessary. I want to find out if your statement that it would be necessary to fence both sides of the road applied to any other road than the road from the main road up Los Alisos canyon and the road leading to the beach? A. Yes sir; it would include all the proposed road.

Q. Now, I will call your attention to a portion of the proposed road that runs from Las Flores canyon very nearly to the beach line as

2401 shown by the map, defendants' exhibit 6, down to a point between Sweetwater and Winter canyon.

Mr. Anderson: That is Malibu point, I think.

Mr. Burnell: I will designate it as a point marked Malibu canyon and a point about half way between where the word "Winter canyon" and the word "Sweetwater canyon" is marked on the map in red. Between that point and Las Flores canyon the road runs very close to the
2402 beach? A. Yes sir; some 200 yards.

Q. Do you think it would be necessary to fence the ocean side of the road there? A. I do.

Q. For what purpose? A. Stock will come down at low tide and there will be nothing to prevent them going to the right of way on the road. We have no cattle at that end at the present time. If our cattle did get down to that
2403 end of the ranch there would be nothing to prevent them going around at low tide, following the high tide lines and around the end of the fence. The portion of that road at the westerly end of the ranch at Nicolas canyon to the Ventura county line runs close along the beach there; from the water line, possibly a hundred yards. I would think there is a necessity for a fence on the ocean side there, as the stock would drift up to the beach and drift on to the highway. There is nothing to prevent cattle

2404 and other stock at the point where the westerly line of the Malibu Ranch at the Ventura county line meets the Pacific ocean, from doing as I said they might do at the easterly end of the ranch, that is, going down on the beach below the mean high tide level and crossing around the western end of the ranch in a westerly direction. Irrespective of fences, it would still be possible for the cattle to get out on the high-
2405 way at either end of the ranch. That would apply to horses, sheep and hogs. There is a portion of the proposed road westerly from Dume Point where the road goes down below the bluff and to the sandy beach, just west of Point Dume. There is no place where it goes very close to the ocean. There is a place where it goes down below the line of the bluff. At that point it is necessary to have a fence on the ocean side, as the stock would drift from other
2406 portions into this vacancy, and they could be led off in other ways.

Q. Wouldn't it be sufficient between the easterly or westerly boundary of the Malibu Ranch and the point where Nicolas Canyon comes down, to have a fence on the northerly side and not on the ocean side? A. That would not prevent the cattle from coming from other pastures here around the beaches. That is the way we drive them at the present time when we move them from place to place. We move

2407 them at the low tide; follow the beach. In my opinion if any part of this road should be left open on the beach side, it would permit stock entering on to the public highway.

Q. Now, at these points, and especially with reference to the last place we referred to, where the road comes down below the bluff, where the road comes right near the ocean, wouldn't the same object be attained—that is, keep the cattle
2408 off the road—if instead of having fences on the ocean side of the road there was a fence extending from that portion of the road which did have a fence on the ocean side right down to the beach, and then a like fence again east? A. It would possibly be all right if there was a rocky point they could not get around.

Q. Such, for instance, as Point Dume? A. Yes, sir.

Q. Now, if there was a fence coming down
2409 to the water and there were gates in that fence along the beach, you could still drive your cattle along the beach, even if this fence extended down to high water, could you? A. Yes, sir; but I find it impossible to extend a fence into the water. High tide will tear it down.

Q. And that impossibility would extend to any fence that would be constructed at the east end, Las Flores Canyon, or at the West Ventura county line? A. Yes sir. In those cases

2410 we have to bring the fence back to a rocky point that they cannot get around.

The woven wire fence that extends for a short distance from the beach at the eastern end of the ranch at Las Flores Canyon, is the only place at this time where we have a woven wire fence 52 inches high and barbed wire on top of that. We have of the fence composed of three or four barbed wires possibly two or three miles. I do not know how long that fence has
2411 been there. It is an old fence. It has been there ever since I have been there. Around the alfalfa field there, we have woven wire 26 inches high. I think that is the height of it; three or four strands of barbed wire above that. Of that fence we have possibly two or three miles; something over three miles I have an idea. Around the barley and beans we have fences four to six strands of barbed wire. How many
2412 miles of that there are would be hard for me to estimate. It continues all the way through the ranch. It runs in and out, and it would be hard for me to determine the distance of it. Taking into consideration all the fences of every kind that we have on the Malibu Ranch, most of them are from four to six wire fences. Of that type of fence, there is, I think, more five wire than there is six wire. I think there is more five than four. The five wire has the greatest mileage on the ranch. I spoke of split redwood

2413 posts. By "redwood" I mean the northern redwood that is shipped here. I also state that we have a great deal of fence that is composed of iron posts, with little short arms or projections on which we put the wire and turn it around to hold it. That is a satisfactory fence, but it is not possible at the present time to get the posts on account of the war. Of that we have possibly four or five miles, five strands of wire.

2414 Q. Now, isn't it a fact, Mr. Patton, that along the side of your alfalfa field where Lachusa Canyon comes down to the ocean, about the place where the so-called beach road is to be put, that the fence around the alfalfa field is composed of barbed wire and iron posts? A. Net wire, barbed wire and iron posts.

The net wire is 26 inches, I think, or possibly 30, four strands of barbed wire, I believe. I am sure about its being woven wire on either side

2415 of the canyon. In the vicinity of Lechusa Canyon we have woven wire around the alfalfa fields. Apart from that we have none. Along the northerly line of the ranch and between the ranch and the property of the persons who use the property to the north, parts of the fence we have newly constructed, a five wire fence through portions of it, and portions is a three wire, the old fence, and there are places that there is 3 and sometimes four. There are places along the northern boundary where there is no

2416 fence. At the head of Escondido canyon, about where Escondido crosses the line, the distance there without any fence is about a half or three-quarters of a mile or maybe a mile. Also along the northerly line, just east of Malibu canyon, we have no fence. From Malibu creek to Los Flores canyon there is no fence at all until you come down Los Flores canyon and strike the end of the woven wire fence. We only keep
2417 stock there with a herder, but in the absence of a herder there is nothing to prevent the cattle going out. Between our property and the Marion Decker place marked X-11 on the map, the sort of a fence we have there is four wire most of the way. Westerly of the boundary of the Malibu Ranch, the kind of a fence is a five wire fence which we are constructing now. Before we began the construction there was none at all, nothing to prevent our animals from go-
2418 ing out the westerly end of the ranch toward the Yerba Buena settlement, except a herder.

Mr. Anderson: Do you refer to the county line end of the ranch? You said the westerly end of the ranch.

Mr. Burnell: Yes.

Mr. Anderson: At that point the county line is the ranch?

Mr. Burnell: The property extending beyond that is not part of the Malibu grant. The one I refer to as the Malibu Ranch—I want it un-

2419 derstood that when I speak of the Malibu Ranch I refer to the area between Las Flores canyon and the Ventura county line bounded on the south by the Pacific ocean and on the north by the broad purple line.

The Court: Referring to the grant.

Mr. Burnell: Yes.

(Continuing). We are not building at the present time any fence along the northerly line
2420 of the ranch. We are going up the county line and we are coming east as fast as we can along the line. It would be necessary to fence both sides of the Los Alisos road because the stock ranges on both sides. The canyon side of that road will not be impassable to stock on account of the steepness below the proposed road. The stock crosses there. I think it would be for cattle. Hogs will go most any place. We do not keep any hogs there at the present time. They
2421 have, but not since I have been on the ranch. There used to be the main headquarters for hogs there. To my personal knowledge they have never kept any hogs or have I seen any hogs kept on that part of the ranch. I have never seen them, but we have pens and accommodations, but owing to the grain I have kept them where the grain is stored. That is down at the mouth of Zuma Canyon. I have never seen any kept, or kept any in the Los Alisos Canyon.

2422 *Redirect Examination*

By Mr. Newby:

We keep stock now on the west side of the proposed Los Alisos road, horses, cattle and sheep. I stated that we had material on hand for building a fence not yet used; 52 inch net wire, barbed wire and posts. We are using that as rapidly as possible and for the building, I think, for something like ten miles more of fence. That was purchased part in December
2423 of last year and part bought the early part of December of last year. When the order was given it was upon my recommendation that they get that kind of material, with the net wire—the net wire was on hand when I came there.

Q. Now, you were asked on cross-examination why it would be necessary to build a fence on the ocean side of the proposed highway at the eastern end and also at the western end. Do
2424 you observe that cattle will wade out into the water around such a fence? A. At low tide they will go around. If you will permit me to explain the way that we overcome those things—

Q. Even at high tide, would the water come up to the right of way? A. No, sir.

Q. I wish you would explain what you mean by that. A. In case the fence comes to a point, where the tide runs low, and there is nothing but sand we usually build a fence back on the

2425 sand to a rocky point, making it impossible for cattle to go around at low tide.

I stated upon my cross-examination that the fence at the eastern end of the canyon went a distance of about a quarter of a mile; the nature of the country at the northern end where it stops is an abrupt bluff that serves as a fence. I was also asked about the territory immediately west of Point Dume. My explanation there is the same as at the eastern end of the ranch
2426 about the necessity of building a fence on the ocean side. My opinion, is that the cross section, if it was built down to the ocean, would not keep the cattle from getting on to the road, unless it was built on a rocky point where it would be impossible for the cattle to come up from the beach.

Q. Knowing the proposed right of way, do you regard that as feasible or practical? A.
2427 No sir, there is no place from beyond the Zuma Canyon up to what we call Steep Hill that would be suitable to build a fence.

I stated that at the present time there was a fence at the extreme western end of the Rindge property, outside, or west of the county line. It is on the Rindge holdings, around and including all land in this portion of the ranch beyond the Ventura county line. It adjoins the Malibu grant line at present, almost to the northwest corner of the county line.

(Witness excused.)

2428 G. E. LEWIS,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

I live at Calabasas.

Mr. Burnell: I will state for your information, Mr. Lewis, that this (Exhibit 6) is a photographic reproduction of the United States
2429 geographical map and the state highway is indicated by the dark lines on the top, and the Rindge Malibu Ranch lies within the heavy purple line. The other purple lines on the map indicate lands owned by the Rindge interests, and Calabasas is indicated at two points, one where the old Topanga Canyon road strikes the highway, and the other west of that, and the Russell ranch is here in Russell Valley as indicated on the map. Will you point out where
2430 your property is? A. I am right in along here somewhere. (Indicating on map.)

That is on the state highway. The road runs right through the ranch, on both sides of the highway, and near the point marked "Grape Arbor." I own there 611 acres and a fraction. My business is farmer. I have been in that business all my life. It is safe to say that that covers a period of over 20 years. On our ranch we raise wheat, barley, oats and hay; a few head of cattle. The ranch next to ours is that

of Mr. Agoure. Mr. Agoure adjoins me on the north. Mr. Agoure's ranch is farming, cattle and hogs. The cattle on the Agoure ranch are in the neighborhood of 1000 head. There is a fence between our land and Mr. Agoure's land. At the present time they have put up a hog fence about 2 feet at the bottom and two wires on top, that is, woven wire about 30 inches high, and then two barbed wires on top, redwood posts, all the way from 20 to 30 feet apart, and they put in a picket between the posts. I presume the fence is about 5 feet high. They are split posts. I don't think those posts are dipped in tar or creosote or anything like that. That fence turns the cattle and prevents them from getting from Mr. Agoure's land into ours. In my experience as a rancher, the type of fence I consider a suitable fence for the purpose of turning cattle is three to four wires. It depends on where your fence is. On the back range three wires will do it. Where there is no grain or anything like that. When the object of the fence is not to keep cattle out of a grain field, three will do it. And when there is a crop on the land adjoining, grain or other products are being grown, where that is the situation next to my cattle, then I use four barbed wires and redwood posts, the same as I described before, with pickets between about 30 feet apart—two and three pickets in between.

2434 I have been on the property of the Malibu Ranch. I went through into the ranch house once. That has been about four years ago. The ranch house I mean is down at the Malibu creek. We went over the Nigger Hill and down through that way. We didn't approach the Malibu Ranch house from the west. We came in on the east side. I could hardly tell you by looking at the map how I went to the ranch, but we went right over the Nigger Hill—what we
2435 call the Nigger Hill—and took a trail that went down through the ranch and came in east of the ranch house. That is the Nigger Hill here on the road from Cornell. Then I went a little bit east there. The yellow line on the map that indicates a road or trail is something similar to the direction I travelled. I don't remember what canyon I went down. We followed a ridge and went on down. I can't tell you what place
2436 on the Malibu Ranch it was with relation to Dume Point. I didn't pay any attention. We struck a road that comes in from Santa Monica. We went around the ranch and came in from the east. When we were up on the range we could look right down on the Malibu Ranch. The character of the land is rolling, similar to what we have got in our country. Of course they have more level land in there than we have, but the nature of the whole country there is rolling, rough mountains. Generally I would

say that the land of the Malibu Ranch is the same sort of land that there is on my ranch.

Cross-Examination

By Mr. Newby:

Q. Mr. Lewis, where there are grain fields, and it is necessary to protect the grain fields from the cattle, it requires more wires and a stronger fence, does it not? A. Just cattle alone four wires will turn them.

Q. Read the question. You say four wires will turn them? A. Yes, sir.

Q. That will depend upon how close the posts are together? A. Certainly.

Q. And the care with which the fence is made, is that correct? A. Yes, sir.

Q. Now, where there are hogs, it requires a different kind of fence, does it not? A. Woven wire on the bottom.

Q. And a strand of barbed wire at the top for cattle and horses? A. For the cattle and horses, yes, sir.

Mr. Newby: That is all.

EDWARD W. LEWIS,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

My name is Edward W. Lewis. I live in Los Angeles, 451 Rosemont avenue. My occupa--

2440 tion is assistant to the superintendent of the Broadway Department Store. I own property in the Santa Monica mountains.

Q. Now, you have not been here and I will explain this map (Exhibit 6) briefly to you. This is a photographic reproduction of the United States geological survey map. The section inside the purple line is the Malibu Ranch. The point marked X-3 is the Charlie Decker
2441 place to the north of the Malibu Ranch, and the point marked X-11 is the Marion or Ernest Decker place. The point marked X-5 is the Vaughn place. I will ask you to state whether or not you own any property in the mountains north of the Malibu Ranch? A. I do. It is in 17. It is the east half of the northwest quarter of section 17, and the southwest quarter of the northwest quarter of section 17.

Mr. Vallee: Will you kindly, Mr. Scotton,
2442 place a mark on the map.

(Mr. Scotton marks on map.)

A. It is the old Drake homestead.

The Court: What is the name of the homestead? A. Drake—Wm. Drake. I bought my place from Mr. Drake ten years ago the 15th of this month. He had had it homesteaded 16 years at that time.

Mr. Vallee: Now, I will ask Mr. Scotton what mark he has placed on it.

Mr. Scotton: I have marked Mr. Lewis' place

here with a green cross numbered 23, in the northwest one-quarter of the northwest one-quarter of section 17, township 1 south, range 19 west.

(Continuing.) That is where my place is located. I have 120 acres there. I have owned it 10 years the 15th of this month. I have never lived upon it. I have had occasion in the past to go there many times. I went the coast road over the Malibu Ranch up to the Encinal and over the Marion Decker place and then over the road built by Mr. Drake and from there over to my place. The last time that I went up that way was the year prior to the ruling of the court against the people. I can't state here. I believe the year prior to Judge Bean's ruling against the government and the people—the government case. I have had occasion to go up there since then; I couldn't state how many times, a number of times. I went up the state highway and over the Russell ranch and Mathieson, and up the Meloy Hill and over past Vaughan's and that section. The last time I was in that road was last year. I have had no occasion to go up there since last year. I would have had occasion to go in there oftener than I have done. I would have lived there if I could have. I have had occasion to go in there oftener than I have done.

2446 Mr. Vallee: Why have you not gone in there?

Mr. Anderson: Object to that as immaterial, if the court please.

The Court: Overruled.

(Exception No. 42.)

A. Because it was almost impossible to get in there on the road I had to go since the Malibu road was cut off.

2447 I have had occasion to live there; I have not lived there because I could not get in there. The roads I refer to when I say roads I could not get over are from the Mathieson ranch up the Meloy grade as I call it—I don't know what the name of that canyon is—it is up the Meloy Canyon, up past Vaughan's and on down into the Sequis there. I have traveled over the road from Cornell into Vaughan's a good many times. I never drove that road. I have always

2448 walked it because it was impossible to drive. I would not attempt to drive a team up from the canyon after you leave—going up Nigger Hill I would drive up that hill, but to go down into the next canyon and up in what is called Shirley Slide would be an impossibility; I would not attempt it with any kind of team or vehicle myself. The grade on Nigger Hill is a very steep grade—almost too steep a grade to haul any load to any extent. I should judge portions of it run as high as 33⅓ per cent, maybe 35; and

2449 the other grade from the next canyon up would run possibly 45 in some places. That is what they call Shirley Slide. I have known people to sled stuff up that place, but I have never known anybody to haul a load there. In the past when I have traveled over Malibu Ranch, I have seen portions of a railroad there, partly in operation. I attempted to ride on a sort of hand-car one time. I had walked up as far as the Latigo, and
2450 I saw a young man coming down on a sort of hand-car or car about the size of a hand-car, run, I guess, by gasoline motor. He had a rifle in one hand and was running the car with the other, and stopped there and shot a badger—shot a badger with his left hand and was steering with his right. I told him I had walked all that distance and I would be willing to pay him if he would take me on as far as he could. He said he would be liable to lose his job if he did.
2451 That was the year before the road was closed. I don't know about what year that was; I couldn't state the year. The year before the ruling against the government case. I have been over the road from Mathieson ranch to Vaughan's, by way of Meloy Hill. It is a very steep, winding and dangerous road; it was when I went up there. I have not been up there this year but last year. I consider it a very dangerous road and very steep. I should judge the

2452 grade on the Meloy Hill is about the same as Nigger Hill.

Cross-Examination

By Mr. Anderson:

Q. Mr. Lewis, is that your name? A. Yes, sir.

Q. Did you understand that when Judge Bean granted his decision in the federal case that that closed the road? A. I did.

2453 Q. Didn't you know as a fact that there was still pending the case of the People of the State of California, which kept the roads open by injunction and that that was not decided until the middle of last year? A. I knew that while there was an injunction I was refused admittance through the ranch.

Mr. Vallee: Wait a minute. What is that? A. I say I knew that while there was an injunction on there I was refused admission to

2454 the ranch.

Mr. Anderson: We move to strike that out as not responsive to the question and volunteered by this witness. I asked him a plain question.

The Court: Motion denied.

(Exception No. 43.)

I don't know and didn't know, as a matter of fact that after Judge Bean rendered his decision the state case was still pending and the injunction was still in force and that it was not decided until last year. I stopped my travel because of

2455 Judge Bean's decision, and refusal to allow me to go through the Malibu Ranch. I passed the first gate and was stopped the second gate near the wharf; that was the time—after the injunction had been issued and the ruling had been passed, Judge Bean's ruling. I didn't know there was any other case pending. I did not know anything about the case passed on by Judge Oster. I have not testified in any other
2456 case and I did not know anything about it. I did not testify in the case tried before Judge Bean.

Q. Now you say that you have been many times over the road from Triunfo to the Decker place, or your place? A. What is the Triunfo road?

Q. Have you been over the road from Triunfo post-office, which appears here, on the state highway, with the words "Triunfo" to your place, which I have forgotten the location of.

2457 The Court: X-23.

A. I have been over there a few times.

Q. I thought you said many times. A. That is the Cornell road.

Q. Which did you find the better road? A. I don't think there is much difference. Possibly the one from the Russell ranch is a little better —the Triunfo road. I found the places in the Triunfo road that were the worst almost from the time you start up the grade until you reach the top. That would be from the Mathieson

2458 ranch up past the Meloy place, after I got out of the Mathieson ranch. After you get out of the Mathieson ranch at the Meloy place, you begin to go up the grade, and also in the Mathieson ranch before you get out. I don't know today how much of a road there is that goes over the bad up grade, because I have not been there this year. When I went over, that bad grade was within a radius of two miles, not all straight up, but a portion of it; probably half
2459 of it was bad. After I got to the end of the two miles at that time it was only a trail. That was last year. I would not call it anything but a trail. You could not drive a wagon over it when I was there. The wagon road ended and the trail began about Meloy's place over to the road that passes Vaughn's. There was no wagon road from Meloy's to Vaughn's; I said last year, I think it was, if I remember cor-
2460 rectly, I was up there—I cannot tell you exactly but it was possibly in June or July. I am not certain. I went by Vaughn's place, in getting to my place. I walked all the way from Mathieson's ranch. I got to the Mathieson ranch by automobile. I left it there. We did not travel to the top of the grade. There was a wagon road up the grade. I went no further than the top, that I recall. From there on I walked to Vaughn's. To my place from Vaughn's, I went one way and came back the other. There

2461 is a kind of a road through the hills there and there is a trail leading off over the Decker cornfield and down into the Sequit canyon. I got as far as what is called the Decker cornfield in going from Vaughn's to my place; that is next to Vaughn's ranch, and then there is a trail leading to the head of the Sequit. It is what is called the east fork of Sequit canyon. We always speak of it that way up in the mountains.

2462 Q. I will call your attention to the fact that on this map here, what is called the east fork of the Sequit—that your place is almost at the eastern end of it. Isn't that a fact? A. I don't believe then that my place is marked correctly. I can tell you the section and the legal description if you want it, but for me to absolutely locate it on the map I don't think I could. If you will show me the section line I will try.

2463 Q. This is section 17, this is section 18. Now here is the corner line, see if you can locate it. A. My line lies right in here (indicating on map).

Q. Take the blue pencil and make a circle there. A. Can I divide the section?

Q. Yes. A. My line is right here, from here to here.

Mr. Anderson: The witness has drawn a blue line across the center of section 17 in both directions north and south and east and west. He has then taken the northwest corner of sec-

2464 tion 17 and divided it into four quarters, and three quarters, being the east half of the northwest quarter and the southwest quarter. That is practically where the X-23 is just outside of his property. A. The east fork runs right through my place.

Q. Now, with that understanding I will ask you where, with reference to this east fork of the Sequit, the cornfield of Mr. Decker is lo-
2465 cated, that you walked through? A. It is just above the head of the canyon, right over the top of the hill. It is a trail leading from the cornfield down to the head of the Sequit, that is a trail. Then we came from this direction and then the road to my place would be right here down this way. The road winds around and comes in in this direction (indicating on map, Exhibit 6). It is approximately on the yellow line—starting at Vaughan's place, and following
2466 the yellow line back to my place, the one that makes the elbow. It is a fair wagon road. After it leaves Vaughan's place, it was headed for Cornell, originally, off down the hill. It is the road that runs almost east from Vaughan's. When I was there about a year ago last June, there was no road from Vaughan's place northerly toward Triunfo post-office at all. When I traveled through the Malibu, I went through very frequently. I visited my place sometimes once a week and sometimes once a month. I

2467 did not visit it as often in the winter as in the summer. In the winter season I visited it about once a month. Assuming that the point where the words "Las Flores Canyon" occurs is the eastern boundary of the ranch, the route I took through was following the road right through until you come to the rocks where we went down into the water. I don't know where that was. It is a place where we had to drive down into
2468 the sand, and wait for the tide. I couldn't tell you for how long a distance I had to drive along the sand. I have been over there many times. I should judge the distance was something like a mile and a half that I drove on the sand, as far as Latigo Canyon. I drove from where I went on the sand at the rocks to Ramirez, and then turned up over the point and went across where the dotted line is, practically (on Exhibit 6) and I think from the point of rocks
2469 where I went on the sand is about a mile and a half or two miles. After I got across Point Dume, I remember a big canyon, Zuma, or Dume. After we got past that the road I took was according to who happened to be there. If Mrs. Rindge was there I had to drive on the sand. If she was not there, they would allow me to go over the mesa. I knew that that road was a private road. My understanding was that the road which I used when Mrs. Rindge was there was not a private road, it was under

2470 a court order. When I went there when she was not home, they would say, "All right, the old lady is not here, go on." That is the very words they used.

Q. You did drive over the private road when she was not there? A. I don't know that she was not there, I was told she was not.

After I got across the mesa, I turned up Encinal Canyon, over the Marion Decker place. That is the road that goes up the hog back,
2471 quite a steep road. I think in some parts it must have been 33⅓ per cent. grade, not as bad as the Meloy grade, not as steep, I think. I said the Meloy was about 33⅓; it was not a very good road. During that period I did not undertake to farm my land nor to get stuff in and out; I was not ready to go on it yet. Ten years I owned it at the present time. There is no house on it. I sold the forty with the house. I
2472 didn't build the house, it was built before I bought it. Mr. Drake told me that he had homesteaded it 16 years. He was on it when I bought it. He told me that he had been living there during the 16 years. So far as I am concerned, during the time I had the use of the beach road, I did not undertake to cultivate any portion of it or take anything in or out.

2473 *Redirect Examination*

By Mr. Vallee:

During the time prior to this ruling that I traveled over the Malibu Ranch, I didn't improve my place because it was almost impossible to get to it with anything worth while; I could not see any chance to do anything until we got a good road.

By Mr. Anderson:

2474 I knew the road conditions when I bought the place.

MRS. JENNIE PARKES,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

I live in the Sequis Canyon. My place is in section 13.

2475 The Court: You better have Mr. Scotton indicate the section line.

Mr. Scotton: This is the corner of section 13, the southeast corner. The location of Sequit Canyon on this section is a little farther west, and if Mrs. Parks owns the quarter, or the east one-half of the east one-half of 13, as she has indicated, it would be just about in here where she has shown. I will mark that 24 in red.

2476 By Mr. Vallee:

That is where my property is located. We have 160 homestead, and 80 acres that we bought; 240 altogether. That is just one-quarter of a mile north of the Rindge line. I have a family, a husband and two children. We have lived up there 14 months. We never lived there before that. We owned the property six months prior to that time. I have traveled down over
2477 the Rindge ranch going to and from our property four times. The last time was in June, 1917. When we first moved up to our property no families were living in the Sequit Canyon north of the Malibu Ranch. Since the Malibu Ranch was closed, we have traveled from Triunfo over what is known as the Decker road. We would use a horse and wagon—a team and wagon, not all the way; up to what is known as Mr. Smashey's house. From there we unloaded
2478 and packed on to the horse and pack down. We carry in weight from Triunfo over to Mr. Smashey's place about 500 pounds.

Cross-Examination

By Mr. Newby:

Mr. Smashey's house is about two miles from our house. There is no road from our house to Mr. Smashey's, nothing but a horse trail. There was no road leading from our house to any other place. We are in a virgin country. We went there about a year ago. The char-

2479 acter of country between our place and Mr. Smashey's is very hilly. There are persons living in there; Mr. Kappler and some more live between us and Mr. Smashey.

The Court: Who besides Mr. Kappler? A. Mr. Malden.

By Mr. Newby:

From our house to the Malibu road we go up out of the Sequit and hit the Mondell road and
2480 go down that way. The four times that I traveled when I was going in, I would go over the Mondell road and then east to our house, and then in going out the four times that I have mentioned, I would go west until I struck the Mondell road and then south, and then east to Santa Monica. The distance from our house to the point where we intersect the Mondell road is just three-quarters of a mile. There is no road between our house and the Mondell road,
2481 only a trail.

CHARLES A. FOOSE,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

My name is Charles A. Foose. I live at 5923 Towne avenue. My business or occupation is painting contractor. I have property located in the Santa Monica mountains. My place is

2482 the southwest one-quarter of the southwest quarter of section 21, the west one-half of the southwest one-quarter of section 21, and lot 2, section 28.

Mr. Scotton: Marked by a green cross No. 25 in the southwest quarter of the southwest quarter of section 21, township one south, range 19 west.

By Mr. Vallee:

2483 That description, with the description I have given, is where my property is located. I own there 159⅝ acres. I have lived upon the property. I can't tell exactly the date I filed on it; it was in the summer of 1911. I went to live on there and started to build my house in December, 1911. I lived there until June 26th, I think, in 1913. I have a family, a wife and two children. At that time I had a little over 25 acres under cultivation, as near as I could measure it.

2484 Of the approximately 160 acres on my land I could get about 60 acres capable of cultivation and that can be cultivated—between 60 and 65 acres. At the time I was living there I went to and from my property from the outside country through the Malibu Ranch, until I left there in 1913. I was up to my property in 1914. I went across the Malibu Ranch in 1914. In 1915 I went across the Malibu. The last time I went across the Malibu was in 1915, in August or September. I have been into my prop-

erty since then. I went around by Triunfo. First before I went to Triunfo I went to Cornell and over. There was no Triunfo then that I know of. To get to Cornell we would go in through the Russell ranch at a point on the highway, and go towards the ocean to Russell's house and turn a little to the left there and go through a gate and down through the river bottom, and down to Cornell. Now we go in at the same gate off the highway, known as Triunfo, over the same route down to the Russell ranch, but instead of going to the left we turn to the right around the Russell barn and to a gate in through the Mathieson place. We go from there down along the Mathieson ranch to a gate in a small canyon, turning up towards the little lake. Without describing it in detail, it is generally down to Vaughn's place. The last three or four times in there I was in with a machine, a Ford. I had to use chains on my wheels, with cross sections, all crossed with chains, and had to take the cap off of the gasoline tank and bore a hole in it and put a tube in it and an air valve and put the foot pump on and pump air into it to get gasoline to continue on. They are Weed chains, only in between the sections on the Weed chains, when you buy them, I had to put on other cross chains, to get them over the tread, to get traction to go up. The automobile that I described is the one that Ernest Decker de-

2488 scribed as having pulled out. I know Mr. Auld; I have seen his automobile. Instead of having pneumatic tires he had his filled with a composition to keep from puncturing them, and had his machine fixed the same as I—or rather I got my idea from him so I could get mine up. His wheels are covered with chains. The machine would not have gone up there if it was not fixed that way; it didn't go up then. I had
2489 to let everybody out and push on the back of it. I would live there at the present time if I had a better means of getting in in either direction, either through the Malibu or from Triunfo.

Mr. Vallee: Now, I assume that Mr. Anderson will probably stipulate that this witness will describe the road from Triunfo in through the Mathieson ranch to the Vaughn place and also the road from Triunfo to Cornell about in the same manner as it was described by witness
2490 Ernest Decker.

Mr. Anderson: Yes. By that we mean that I might myself wish to ask him one or two questions.

Mr. Vallee: Oh, yes. We will not limit you on any cross-examination on that phase of the matter.

Cross-Examination

By Mr. Anderson:

I never tried to get to my place over the Malibu with a machine. I went up the Malibu one time to the Corral canyon to see some folks.

Q. But you could not get up through any of those canyons with a machine, could you? A. I never had a chance to try; I wouldn't say for certain.

I have been over the road. I used, going to my place, the Marion Decker road up that hog back. I couldn't state whether I could take a machine up there or not. If the road would not be washed out with ruts I could get up with the Ford under the same conditions that I went over the Meloy hill. It was usually washed out and rutted, at some places, but the grade on the Marion Decker grade, while it is steep, they are not long. They are short and flat that you could stop on, and then short ones on up like that, and so around the side hill, where the Meloy grade is absolutely almost a straight pull going up; there is no winding around on level places; it is steep. I consider the Meloy hill from the bottom to the top a mile or a little better. The Encinal canyon hill from the bottom to the top we always figured that around the road it was about a mile and a half, but on a direct air line down it is one mile. The road itself—well, about a mile. It takes an hour and a half to drive it.

2494 I am thirty-nine. My occupation is painter. I have followed that since 1893. I take contract work on my own hook. My earning capacity during the past year per month on an average has been about $3.50 a day; when I was working as a journeyman, three and a half to four dollars. I have not averaged my earnings during the past year per month, either by the day or as an independent contractor. I have an idea,
2495 $4.00 a day throughout the year. On the 25 acres that was cultivated, I had barley, wheat and garden truck, and corn. I last cultivated it in 1913. The amount of the crop of barley, as near as I can tell, was about 7 acres, I didn't cut it in front of my house, but there was 10 acres and I cut about 3 acres of that, and I weighed them and it averaged up that there was 9 tons on the 3 acres, of barley hay to be threshed; it was not threshed. I raised a crop
2496 of oats the year before that on the same piece of land, as near as I can tell, I got about 4½ tons; I didn't thresh it, I fed it. I have never raised a crop that I threshed, either wheat, barley or oats. I have sold produce from that ranch; I sold 27 sacks of potatoes in the spring of 1912, to the neighbors. I did not take them out. I brought them out for my own use, about five sacks. I have never marketed anything excepting which I might sell in the neighborhood. Those potatoes were the only thing I sold.

2497 I did not consume on the place whatever else I raised. The stock we got in there consumed it. My place had a fence around it but one field of barley was eaten off by the Malibu cattle. It was the Malibu fence which was down. The posts were burned off and the wire down for two miles. That was in 1912. Other years the Malibu cattle did not get into my place. The Mathieson cattle came over. They
2498 turned them loose in there purposely to improve their own ranch. There was no fence in there at that time. The cattle could not help from coming there. I did not have any fence around that side, only around the ten acres. They didn't break that fence. They didn't get in there. It was on the outside pieces. With the exception of the potatoes that is all that I attempted to market.

Redirect Examination

2499 By Mr. Vallee:

I had a two wire fence. There were cattle around there. They did not get into the ten acres.

SIDNEY M. MALDEN,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

I live just above Nicolas flat in the Santa Monica mountains; business, ranching.

2500 Q. Now, if you will step down to the map (Exhibit 6) I will explain it briefly so that you can locate your place. The purple line upon the map, which is photographic reproduction of the United States geological survey map, includes the Malibu Ranch. The canyon you see marked Nicolas canyon is Nicholas. The part marked in purple to the north of the Malibu Ranch is a piece of property owned by the Rindge Com-
2501 pany. The line marked in green is the line between Ventura county and Los Angeles county. The black line, with the arrow on it is the Sequit Canyon, the east fork being marked "east fork." The point X-3 is Charlie Decker's place; the point X-5 is the Vaughn place. Now can you tell us where your property is located? A. I have two quarters on the southeast running west and two quarters running north on the northwest.

2502 Mr. Vallee: Can you locate that for us, Mr. Scotton?

Mr. Scotton: I have marked the location of Mr. Malden's place with a green cross No. 26, in the northeast one-quarter of the southwest one-quarter, section 18, township 1 south, range 19 west.

By Mr. Vallee:

That is where my property is located, part of it. I have there 160 acres. I have in cultivation about 5 acres. I have cattle. As to how

2503 many head, I would have to look up on the books. Mrs. Kappler's cattle and mine are running together; I have approximately about 6 or 7 head. I have a son; he is there with me.

Mr. Vallee: Now, Mr. Anderson, if you will stipulate that Mr. Malden will testify substantially the same as Mrs. Kappler as to his means of ingress and egress—

Mr. Anderson: Yes.

2504 Mr. Vallee: And the condition of the road?

Mr. Anderson: Yes.

MRS. C. M. DECKER,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

I live in the Santa Monica mountains in section 20. I am married. My husband's name is
2505 Mr. Charles Decker, whose place has been identified as in section 20, with the cross and the mark 3. We own 160 acres in 20. We own 160 acres in 16. On the south line there are two forties and one adjoining 15 and one on the north adjoining 9 and one forty in 9. 9 is over just above 16. One forty in 9 and one adjoining it in 16, two on the southern extremity of 16 near the center, with two adjoining the center, and one adjoining 15 in 16.

2506 Q. I will ask you to step down and indicate as closely as you can, and ask Mr. Scotton if he will kindly assist us. If you will indicate by a cross the property that the Deckers own in section 9 and 16, and in the other sections as well as in section 20, that will assist us very much.

Mr. Burnell: I will ask you, Mr. Scotton, what you have marked on the map?

2507 Mr. Scotton: A 40 acre piece in section 9, and a 40 acre piece in the northwest one-quarter of section 16. Those are two pieces adjoining and have been marked with a green cross No. 27. A 40 acre piece in the southeast one-quarter of the northeast one-quarter of section 16, marked with a green X No. 28, and two 40 acre pieces in the south one-half of the south one-half of section 16, marked with a green cross No. 29, all those pieces being in township I

2508 south, range 19 west.

By Mr. Burnell:

360 acres altogether are owned by myself and husband, and those are comprised within the various parcels I have just pointed out. On the homestead we have about 18 acres in cultivation. We raise on that corn and barley, principally. We have an orchard and a vineyard set out at the home place, in 16, and the adjoining 9, that is in beans, I imagine about 15 acres, in beans this year. We have no more cultivated land at

2509 the present time. The land that we raise the corn on is some on the home place, in 20. There is a part of the land known as the Decker cornfield, but that is where we have the beans. We have had it planted to corn. It is where the bean field now is. We have lived there seven years, continuously. I have a husband and six children. I had known the country before we moved there over 20 years, we have had our homestead that long. We have lived there continuously
2510 for the last seven years. We have tried living there at various times before that, but we have lived there continuously for the last seven years. We went back July 14th, 1911.

Mr. Burnell: Now, I will ask you gentlemen if you will stipulate that Mrs. Decker's testimony with regard to the various roads and trails leading down to Triunfo by way of Meloy Hill, to Cornell, and the other roads in the vicinity
2511 will be the same as the testimony of Mr. Foose and Mr. Decker and the other witnesses living on that Decker plateau?

Mr. Anderson: With the same limitation that we may cross-examine her.

(Continuing.) In addition to the road and trails leading from our neighborhood down to Triunfo post-office and to Cornell, there are no other roads or trails that we use in getting into or out of our property, other than through the Malibu. We formerly went through the Malibu;

2512 we ceased going through the Malibu two years ago, I believe, simply because the roads were closed and it was difficult to get down that way. Prior to the roads being closed through the Malibu we had traveled in and out of Triunfo. Before the roads through the Malibu were closed the Malibu Ranch road was the most frequently traveled. That was our usual means of getting in. Since that was closed, we have
2513 gone the road to Triunfo. The Malibu road we found the easiest. We have made the trip to Santa Monica in four hours by the Malibu road; it takes us three hours to go to Triunfo, and then from there I don't know how many hours it would take. We have never driven that with the team. At Triunfo we take the stage. I have traveled through the Malibu Ranch going to or coming from our place more than twenty times. On those trips I never
2514 stopped at the Rindge house and Mrs. Rindge never served me any meals, nor did she ever make up any beds for me.

Q. Did you ever steal any of the property on the Rindge Ranch?

Mr. Anderson: We will stipulate to Mrs. Decker the same as the others.

Mr. Burnell: That she has never stolen any property?

Mr. Anderson: That she would so testify.

2515 Mr. Burnell: Or burned any buildings, or shot any cattle or set fire to any crops or anything else?

Mr. Anderson: Yes.

Mr. Burnell: All right.

I know the Meloy hill. We have all worked on that road a little bit. The work was done by people that helped on it. I don't know whether the county has done any work on that hill or not.
2516 I don't think so. In that neighborhood work was done by the settlers. Mr. Meloy made the road by the little lake. That is, his men made the road. Within the last year, I do not know of any work being done on the Meloy hill or that vicinity. From the Meloy place over my husband worked on it. That was done after the rains this last year—this year, that is, after the rains of the winter of 1917-18. Before that work was done the road was impassable. The
2517 county did that road work from the Meloy place to the Vaughn place, I believe. Before the work was done, as I have just testified, it had been a trail. I never went over it prior to that work being done, with a wagon; we packed our beans out horseback last winter on that trail, 25 sacks. They averaged over 80 pounds the sack. We packed them to the Meloy place and then we hauled them in a wagon down to the highway and they were taken by trucks to Albert Cohn's store, to Los Angeles, and we sold them to Al-

2518 bert Cohn. There is no other method by which we can take out our produce to market, that I know of.

Cross-Examination

By Mr. Anderson:

The first time I traveled from Triunfo to our place by the northerly roads was 1914 or maybe 1915. We packed horseback from the Meloy place over. At that time the Malibu roads were not closed.

2519 Q. As a matter of fact, hadn't the Malibu roads, particularly the roads east of Ramirez and along the beach, become so much washed out by rains and waves and floods generally that they were almost unusable? A. Well, the beach was always bad, and we were compelled to use the beach.

That was the road it was agreed by Judge Oster we could use. During this period of 1914,

2520 in and about that time, 1914, and 1915, in fact until we quit using the road, I think they got worse and worse along the beach, so bad that they were practically impassable at points. We have used that Triunfo road or the road from Cornell with a wagon, clear to the Charley Decker place, our home. The first time I believe was along these same dates I have given you, 1914 or 1915; I don't remember those things. I recall the fact that about the 4th of July of 1914 there was a large meeting of the

2521 neighborhood up there at Cornell. There were two meetings held that year; both meetings held for the purpose of raising funds to work those roads. Mr. George A. Fremlin and I were the publicity committee, I believe. At those meetings there was a subscription started for the construction and improvement of the roads in that neighborhood; it wasn't finished because we decided we couldn't do anything about improving those roads amongst ourselves; it was
2522 out of the question. I know of no work done on those roads before that time by anyone, before those meetings. Assuming that the meeting I have particular reference to was July 4th, 1914, I don't know as to whether any work was done on any of those roads between that and the end of the year. My husband worked on the road at one time, but I don't remember the date. When we were holding meetings we could get
2523 a wagon over the road as far as our house, but no loads either way. We first got a wagon with a load over either of those roads directly after that; I believe we hauled about 200 pounds home that way. There was not much difference in the grade of the road at the time that we were hauling the 200 pounds in than when we went in with empty wagons; the gullys had been filled up and things like that. We got the first load over this Cornell road, that is the one that has Nigger Hill. We tried using the Cornell, about

2524 a year. We made over it during that year in the neighborhood of four or five trips as near as I can remember. During that year we made over the Malibu perhaps three or four. After we ceased trying to use the Cornell road we used the Triunfo road. We first got a wagon load over the Triunfo road not until this last year; I believe it was in November, as near as I can remember, November, 1917. We hauled our
2525 loads to Meloy's place and packed in on horseback, between 1914 and 1917. We went to the beach a few times. Excepting that, our more frequent method was to haul to Meloy hill and pack in. This last year, in November, we finally got a road we could get through with a wagon. I have known of a few automobiles coming through. The county automobiles came to our place. There was a Ford came in this year; they were from Long Beach; no more came to
2526 our place in this year. I have seen automobiles on that road at the Vaughn place, two. One was Mr. Shoemaker's and a Ford belonging to Mr. Joy. Those are all of the autos I have seen on that road. The kind of an outfit I was traveling with when I made a trip from our place at the top of the mountain near the head of Encinal Canyon down to Santa Monica in four hours was a light spring wagon and a two-horse team. I made that trip several times in four hours. I don't remember the date of the last

2527 one. It was as far back as 1914, and prior to that; within the neighborhood of five or six years ago. Before we went to the mountains we have lived in Santa Monica and Los Angeles both. We went out about seven years ago. At that time we knew there was litigation pending over the road and that the road was kept open by reason of injunction.

Redirect Examination

2528 By Mr. Burnell:

I do not know of any automobiles coming to our place at any time before the work was done on the Meloy grade and on the road to Triunfo this year. That work was done from the top of the grade to Vaughn's place. The Ford machine came in by its own power; it got out by a team of mules. That was because of the grades; they used the team of mules and the engine also. We used to try to use the Cornell 2529 road in 1915 because the beach road was so bad, and we were not allowed to use the dirt road. There was a dirt road through there; they compelled us to go on the beach. In attempting to use the Cornell road in 1915, after leaving the Vaughan place, we came to the Shirley Slide; it is practically a drop off the mountain; we got up and down on that by tying the wheels and putting on the brakes; then after reaching the bottom of this hill, which I believe is over a half mile in length, some of

2530 the grades, one in particular, you climb 16 feet in going 20 feet. Then after getting over the Shirley Hill, we go through the canyon and up the stream bed for half a mile and then we proceed to climb out of the canyon. This next grade is, I imagine, over a mile and a half long, from the Roller place to the summit. Then we go down into the old Coulter place and I think it is over a quarter of a mile long, and nearly a half a mile, to this, then we go along on a
2531 road that is practically level and then a grade out of that place and down into the Burley place, and then over a rolling country for perhaps three-quarters of a mile and another down grade into the old Shipman place, and there the road is good for half a mile and then out the Smith homestead and there we had a slight grade, to the top of Nigger Hill. I don't believe it is necessary to give any more description than
2532 what has been given before. It is a very steep long grade. There were other places besides this Shirley Slide where we had to lock the wheels; we had to lock the wheels on all these grades, but we didn't always tie them. By locking the wheels, I mean applying the brakes. We tied the wheels on the Shirley Hill going down the hill; coming up you can't pull 200 pounds up there. To get to Shirley Slide with your wagon you drive your team up. We have unloaded at the foot of this hill and come back for various

2533 loads, when we had more than 100 or 200 pounds in the wagon. You could take up 200 pounds if you had a good team.

WALTER KIELHOFER,

a witness called in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

I live right at the head of the east fork of
2534 the Sequis Canyon. I have 160 acres there.

(Mr. Scotton marks on map.)

Mr. Scotton: I indicated the house of Mr. Kielhofer with a green cross and marked it No. 30 in the northwest one-quarter of the northwest one-quarter of section 9, township one, south, range 19 west.

By Mr. Vallee: That is where my place is located. My wife lives there most of the time.
2535 I am up town working. I have lived there off and on for probably a week at a time or a month. I was out there a couple of weeks ago for a week. The first time I went out there to live was not quite a year. I went out there and put the house up. I am familiar with the Santa Monica mountains north of our place toward Triunfo and Cornell; I climbed out of them all the way off and on to find a way of getting out and in. I have carried mail up in that country from Owensmouth to Triunfo and from

2536 Triunfo to Cornell. In carrying mail from Triunfo to Cornell I went over the road known as the Cornell road. That is the yellow line indicated upon the map (Exhibit 6) from Triunfo post-office down to its intersection with that other yellow line under the letter "S-S" in the words "Russell Valley," and on in a general southeasterly direction to Cornell.

Mr. Vallee: Now, before I ask the witness
2537 the next question, I will ask you if you will stipulate that Mr. Keilhofer would testify similar to the other witnesses with reference to the road from his place to Cornell, and from his place over the old Decker road to Triunfo?

Mr. Anderson: I will just ask him this question: have you traveled all those roads? A. Yes, sir. Well, I have not traveled the Nigger Hill road.

Mr. Vallee: You have never traveled that?
2538 A. No, sir.

Mr. Anderson: If you will specify, I think I want to interrogate him.

The Court: You had better interrogate him.

Mr. Vallee: You say you traveled from Vaughn's place, X-5. I will ask you if you have traveled over the road from Vaughn's place to Triunfo? A. Yes, sir.

Mr. Anderson: We will make the same stipulation as to this witness that we did to Mrs. Decker.

2539 Mr. Vallee: That will be satisfactory.

The Witness: The last time I traveled over the road from Triunfo to Cornell, I think, was in May, this year. I carried mail from Triunfo to Cornell for about seven weeks, April and May of this year. From Triunfo post-office to Russell's office is a good road, just dirt road. You go through a gate there and turn to the left and go through the alfalfa field, where it
2540 is rough in places and there are about five or six gates to go through before you hit the creek. You go through the creek. If you don't go a certain way you will get into the quicksand to the left. When I was going through there the water was pretty high and it was right after the heavy rains. Then you go about, I should judge, 150 feet to the creek. You have to take the water most of the time, or did at that time. Then you raise out and get away from where
2541 the water had washed it away, in places about five feet high. It had cut it down. You come down a little plateau and hit some rocks east, by the water still in the creek. Then you go into the creek again and there are two roads to take. One is a steep short hill, and another to the left of the creek, and under some trees where the water had washed through a big rut in places. Then you hit another steep hill with some rocks in it. Then you have a good road to a place called Isenprice, a hermit who lives

there, and then a steep hill goes down to the creek. There was two big ruts in that where the water had washed. You strike some bad places. The water is about 3½ feet deep, but not so wide as at Russell. There is some more sand to pull, and then another hill to get up, and you have good road until you hit the Grant gate and go through into the Grant, and then the road was fair for quite a distance, and you have to go through to the creek again. The hill was not so steep there, but there is sand to go through. Then the road is fair for a ways; then there is another steep hill. I remember one big rock right in the middle of it. Then you have the choice of another way to turn, either to the right or to the left. The left one takes you through to the creek, which I judge is the best way to take. To the right you go over the side of the hill where it has been cut out, and there is some rocks. At that time there was a spring or rather some seepage right in the middle of the road. To the left it goes down steep into the creek, and there is considerable sand. You have to go through the water on both sides. Then you have to climb the bank again. You go a short distance on fairly good road and then you have to go through the creek again, about the same description, sand, and so forth. Then you come to a kind of open country where another canyon runs in. Then you

cross another creek, which runs into that. I don't know what that canyon is called, but then there is some people living there by the name of—they live farther up in the canyon. I kind of forget their names. Then you go a short distance and hit where the old post-office used to be; it ain't Cornell yet, but it used to be the old Cornell postoffice. The road is fairly good all through there, but not to Cornell; you get to a school house, and the road crosses the creek, and I don't know where it goes to, and then to the right it is fairly good for a ways until you hit another creek where it is steep, and there there was a great big rock. There was no sand in that creek. Then you cross another creek a little farther up. Just before you get to Cornell you have got another creek to cross, and there is still another creek to cross, but that creek is kind of bridged and fixed up. That is right in Cornell; then you get to Cornell. I went over that road almost every day. The longest hill is right there at Russell's where you go down into the creek the first time. That grade there was about 500 yards long. I saw four automobiles on that road the first week, stuck right there at Russell's in the sand, and Russell's horses pulled them out. They were going to Cornell. Russell pulled them out, back to the ranch. He pulled them out of the sand and back up the hill, and from there they went

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on their own power. They didn't go any farther towards Cornell.

Cross-Examination

By Mr. Newby:

It is a good road from Triunfo as far as Russell's office there right near the gate, the building, the main building. These autos that I saw stuck were in the sand; the first one I saw was a Chevrolet and had a trailer. That stuck right in the creek. There was no grade in the creek. It was right in the creek; it sunk right down into the creek. I guess it is more rocks than sand. It was not caused by the steepness of the grade but by the sand and water there. There had been a heavy rain about a few weeks previous. I have not been over that road on other occasions when there was no difficulty in getting over. This was not the only auto I ever saw up there; there was two others I remember seeing there, and there was one Ford I helped pull out myself. I drove a horse and wagon; I had a light wagon and a horse. Sometimes I used just the horse. There is no stage to Cornell. I have the only stage; that is, if somebody wanted to go I took them along. The sand was in the creek, but the loose sand was more to the side of it. The high water no doubt had washed over it. I don't know if it was brought down by the high water. I supposed it had been brought down by the creek. The creek runs the

2551 whole year around. At that time, that part, the creek runs the whole year around. I have not been across it at all seasons of the year; I have been told that by the homesteaders that live there. I don't know it of my own knowledge. They are people living on that road; there is three that I know of. Mr. Isenprice is located about half way to Cornell, and there is another fellow right above him by the name of
2552 Howard. I used to leave mail at Isenprice's and I left mail there to Dixon's. That is the name I tried to think of. And also another man that lives in that canyon that comes down into that Triunfo Creek. And I left also mail a little further up just beyond the school house at Mr.— I can't think of his name now. He lived back farther down the canyon somewhere. I don't know just where. I never was up there. I also carried mail for the Decker plateau to Triunfo.
2553 Triunfo was the post-office for the Decker people. When I went to my place, I went over the Meloy grade. That is the Decker road. I built my house about a year ago, I think it was in December, 1917. At that time I built 10 x 14. Then I built an addition to it. Mr. Stout hauled the lumber in, up the Meloy grade as far as Kelso's, and there I carried it in myself on my back, about 2 miles on the trail. No wagon road from there to my place. From the Decker's I am about two miles—the Decker road, north-

2554 west of the Decker road. The lumber was a portable house. It was hauled by the Oxnard Express to Triunfo. Then from there Mr. Stout hauled it to Little Lake and then made five trips to Kelsoes with the rest of it. Kelsoes is just about a mile—no, it ain't a mile—northwest from the Decker road. There is this road that joins below Vaughan's, the road which we use—I can show you on the map.

2555 (The witness indicated a point on Exhibit 6 already marked X-27.) I think that that is the house. There is no road from my house to Kelsoes. They are building on that road now. Whenever I get time, I work on it. It is capable of construction. It is along the side of the hill. The bench mark, the elevation near my house, is about 1800 feet, according to the contour of the map. The locked mail sack I carried did not have so very much in it, all the way

2556 through, but I took up considerable parcel post; sometimes as high as 200 pounds. I averaged daily around 100 pounds, I should judge. I had difficulty in traveling with my rig from Triunfo to Cornell; the horses had a good pull; I made it in an hour and three-quarters, something like that. The distance is 5½ or 5¾ miles. I had a light rig. Sometimes went horseback. Horseback I made no quicker time, just about the same time. It took me all day to carry the mail from Owensmouth. I had a machine to Tri-

2557 unfo and from there I had a horse and wagon. I would not use my machine through that canyon. I used a machine to Triunfo and then took the wagon to Cornell. I ran the horse most of the way, too, to make good time.

Redirect Examination

By Mr. Vallee:

I say it took Mr. Stout five days to pack in this portable house from Little Lake to Kelso's house, the same road that he had taken from
2558 Triunfo to Little Lake. One trip each day, which included provisions, some lumber and other things I had, furniture and things of that kind and the house. He didn't take it all in one load. He took several loads to the foot of the Little Lake, from there he would just take about 500 pounds and go over the grade to Kelso's. I don't know how many trips he made from Triunfo to Little Lake. He made it in one day.
2559 That is all level road.

MRS. C. M. DECKER

recalled.

Direct Examination

resumed.

By Mr. Burnell:

I know where the railroad tracks are that run through part of the Malibu Ranch. I have seen a flat car being operated over that route, what would be called a hand car. I asked for permission to ride once. We were coming with a

heavy load up the beach, about $15, I should judge, in November. I saw at the time Mr. Decker and a child. The baby was 14 months old. I was walking along the railroad at this point because the water was dashing against the wagon where we were driving on the beach, and the men came on the hand car, and I asked permission to ride to Zuma to get the baby out of the storm. It was raining and it was cold. They told me they hated to pass me up but that it would cost them their jobs if they took anybody to Zuma. At that time I was ready, and able and willing to pay a reasonable fare. None of them asked me for any fare. I asked permission to ride to get the baby out of the storm, and they told me they could not take me, that it would cost them their jobs if they did.

H. L. COMLY,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

I live at Los Angeles; I am deputy county surveyor and have been such five years.

Mr. Anderson: So far as the qualifications of Mr. Comly, I think we can stipulate to the formal qualifications. By that I mean to say that I wish to ask him something about this particular matter.

Mr. Vallee: That will be agreeable.

2563 Mr. Anderson: We may want to question him about specific matters he testifies to.

The Court: You stipulate that he is a qualified surveyor and civil engineer?

Mr. Anderson: Yes.

Mr. Vallee: Now, we have a large map here, Mr. Anderson, which is the same map as is attached to the complaint and is the Plaintiff's Exhibit "A" attached to the complaint.

2564 Mr. Anderson: The same map?

Mr. Vallee: It is the same map exactly, but it is in better shape so we will be able to place it upon the blackboard with the understanding that your previous objection is made to the court at the beginning and the court instructing the jury that the particular legends upon the map are not evidence. I presume counsel will stipulate that this is the first section of the map attached to the complaint to be marked as plain-
2565 tiff's exhibit.

Mr. Anderson: Of course I have not examined it but we will so stipulate.

Mr. Vallee: If you desire a copy I can furnish you with a copy but I think you have one. (This map is included in the exhibits to be certified up).

By Mr. Vallee:

(Witness, continuing): The survey was made for the proposed right of way through the Malibu Ranch on the so-called Malibu road in

2566 the main case from March to July, 1915. I had charge of the party making the survey. Mr. Bowlus, the locating engineer, laid the road out, the right of way, upon the property and actually located the right of way as surveyed. Mr. Bowlus and myself went over the entire location together and marked all the lines on the ground before the survey was run. The survey was run in the same location as the road was located before the survey.

2567 Q. Now will you start at the eastern end of the ranch at Las Flores canyon and take the right of way from the beginning and tell the jury why the road was placed in that particular place and where the parcels appear on the side of the road, why those parcels were placed there.

A. Beginning at the easterly boundary of the Malibu Ranch at Las Flores canyon we have a strip 40 feet wide, which is the general

2568 strip, and the parcels on each side to accommodate cuts and fills.

Q. Now, Mr. Anderson has called my attention to a matter that I should probably go into first before you start to describe the right of way.

(Continuing). The scale of the map is 10 feet to the inch. The red portions indicate the proposed right of way forty feet wide, and the strips in red along the forty foot strip in red are the parcels of land supposed to be taken in

2569 this suit. The words on the map "center line of railroad right of way as per deed No. 6216," that is the center line of the railroad right of way that now exists upon the Malibu Ranch. That center line is one long dash and a short dash and a long and short dash, alternating all the way through the map.

Q. Now, I observe the words "county road declared a public highway by board of supervisors February 2nd, 1916" a strip appearing to
2570 be strip between two lines which are made up of long dashes, that is the road over which dedication there was a resolution introduced in evidence—is that right, Mr. Anderson?

Mr. Anderson: Yes, that is 20 feet in width.

By Mr. Vallee:

(Continuing). The lines there mark approximately high tide lines; that is, the approximate high tide lines. And the legend "Pacific Ocean,"
2571 that indicates the Pacific ocean. The approximate high tide line is the long black line appearing under the strip in red, and the other lines —dash lines—appearing below the line of the approximate high tide indicates waves; water lines.

Q. Now, Mr. Comly, just start with your description. A. At the easterly end of the ranch across the bridge at the Las Flores Canyon, the center line to a point about 325 feet from the beginning, we are at a point 50 feet from the

2572 center line of the railroad. From there on we follow parallel with the railroad until we get to Carbon canyon or Coal canyon, and there we swing southerly around a high point of hills for a distance of about 500 feet to another point. At that point where I say you swing south, the roadbed or the proposed right of way, is approximately, from the mean high tide line, 150 feet. That particular place was selected because it
2573 was the best location for the road, good grade, flat, easy of construction. To the north of the proposed right of way along that stretch is the railroad right of way. To the north of the railroad right of way are hills, right down to the proposed right of way. The hills at that point are 80 to 100 feet high. Starting at the point where I say the proposed right of way turns south, we swing around the foot of a high bluff at Coal or Carbon Canyon, passing the bluff
2574 and coming back to the point which is 70 feet south of the center line of the railroad right of way. On the side of the 40 foot red strip there are some further red strips; they were put in to take care of a cut and fill at that point which would be necessary. Then we go parallel with the railroad up to a point about 100 feet east of Sweetwater Wash or Canyon. On that strip the proposed right of way from the ocean is 200 to 300 feet. The railroad right of way lies north of it; the hills lie to the north of the rail-

road right of way, 80 to 100 feet high. The right of way was placed in that particular location along that particular strip because it was the most economical place to build a road. The road could not be placed any closer to the ocean. Then we swing near to the railroad past the warehouse and cross it at about 150 feet west of the warehouse, as shown on that map. The proposed right of way does not take any of the warehouse. It comes to 30 feet of the warehouse. The railroad right of way lies to the north of the proposed right of way and upon the rails. Just before you reach the rails, a square mark, marked "shed" is upon the map. That is the watchman's house, I believe; about half of it is on the proposed right of way. That is what appears to be marked "House" on the map. The square marked "shed" on the map is the engine house for the railroad. The right of way does not take any of that. Another square on the map south of the warehouse, which is designated as "Loading Platform," is the loading platform for the warehouse, or the railroad, at that point. The proposed right of way takes about three feet of that on the south side. At that point the proposed right of way cuts across the right of way of the railroad. The distance from the eastern point where the proposed road right of way crosses the right of way to the western point where it crosses fur-

2578 thest westerly—the distance from the eastern point where the proposed road starts to cross the railroad right of way to where the proposed road right of way finally leaves the railroad right of way is 1170 feet. The proposed right of way is 300 feet from the ocean at the warehouse point. The right of way could not have been located at any point there without having to cross the railroad right of way, because on
2579 the south side of the railroad right of way there is drift sand all along, from the warehouse west around the point; at a point about 600 feet west of the warehouse, we are on the north side of the railroad right of way at the foot of the slope, and we follow along to the foot of the slope until we get around to the gate leading up to the Malibu Ranch house and then from that starting point we have portions on the side to take care of the cuts and fills, the cuts on the
2580 north and the fills on the south side. It would not have been practicable to have constructed the road there at that point without having to take these parcels for cuts and fills, on account of the grades and the contour of the hill. From the gate, from the road leading from the ranch house we run north about 400 feet, to just before we come to the point of the hill, sticking out to the east of Malibu Creek, just south of the hill we cross Malibu Creek in a westerly direction to a point just south of the gate on the

2581 road, the present road, leading across Malibu flat. Where the proposed right of way crosses Malibu Creek the road has red strips on the outside of the main right of way; those were for fills at that point. It was not practicable to have placed the road at that point without making those fills. We had to have dirt. There is a fill on each side leading to a bridge. That would have to be protected. From that point, the road goes about half a mile or a little less
2582 in a straight line towards Malibu flat, to the north end of Malibu Lake. That is a strip 40 feet wide all the way through. From there it goes in a southwesterly direction to a point where the Winter Canyon wash crosses the present road on the north side of the railroad right of way. The particular route was selected going north from the east side of Malibu Creek and then west, instead of going directly across
2583 Malibu Creek and Malibu Lake to Winter Canyon, because at Malibu Creek, at the railroad bridge, it is much wider than it is lower down, and there is no natural protection to the road from the north. At Malibu Lake it would be necessary to build a bridge. If we had gone directly west, it would have been necessary to have crossed Malibu Lake. The proposed right of way, as laid out, does not cross Malibu Lake. From Winter Canyon the road goes in a southwesterly direction along the foot of a hill over

2584 the present traveled road. At a distance of about 1000 feet we leave the present road and swing more northerly along the foot and side of the bluff until we reach a spot a distance from Winter Canyon of about a half a mile. From the point after you cross Malibu Creek the proposed right of way does not follow the present traveled road to Winter Canyon. The proposed right of way at points between Malibu Creek and the point which I have described on the
2585 map, about a half a mile west of Winter Canyon is on the present road, at the north end of Malibu Lake and between Winter Canyon and a point about a half a mile west. That is from the point north of the Malibu Lake to a point upon the map marked 214.53. The exact parts where the proposed right of way covers the present road are from Station 180 plus 50, the present road is within the proposed right of way.
2586 From Station 194 to Station 202 plus 50 the present road is within the right of way of the proposed road.

Mr. Anderson: Between now and Monday the witness Comly might tabulate those roads and show the places he is being asked about.

The Court: That is a good suggestion. Can you do that, Mr. Comly? A. Yes, I can.

By Mr. Vallee:

From a point west of Winter's canyon "par cels" on each side of the forty foot strip marked

in red are for cuts and fills. Crossing Winter Canyon there would be a fill. The portion on the north side would take care of the slope and the fill on the south side. From Station 197 westerly the parcels on the north side are for cuts. And from Station 197 on the south side going westerly they are fills. It was necessary to make cuts and fills at that particular place, as the road was located on a side hill. I could not have located the road at the bottom of the hill because of the railroad right of way and it would have necessitated another crossing of the railroad. Station 217 plus 80, approximately, we come onto the mesa, and we follow along the southerly portion of the mesa to a wash at Station 227 plus 50, approximately. At station 218 plus 64 on the south side of the right of way there is a twenty foot parcel to take in a fill. There is a low place beside the road. Beginning at 203 plus 25 on the north side of the road there is a parcel to take care of the cuts until we get to station 218 plus 00, necessitated by side hills. At station 204 and station 205 plus 55 there is a parcel, a cut and fill. The fill is for broken ground. At station 206 plus 75 and station 210 plus 90 there is a parcel to accommodate a fill, for broken ground. At station 213 plus 50 and station 217 plus 50 there is a parcel to accommodate a fill due to broken ground to the south. From station 219 plus 93.13—I will correct that.

2590 From station 220 plus 00 the road is 40 feet wide until we reach station 225 plus 00. On the north side is a borrow going beyond the length of this map. On the north side of the road part of it is to accommodate cuts and part fills. On the south side from station 227 to station 228 there is a portion to accommodate a fill. From a point where the road here of the proposed right of way leaves the railroad right of way, just west of the center of the canyon,
2591 the right of way goes on rolling, hilly country. The proposed right of way leads to the beach at about the point designated west of Winter canyon. From the beach at Winter Canyon, it is 400 feet; from the beach at Dry rock 1000 feet. This particular route was selected instead of following along close to the present right of way of the railroad because along the beach there that is bluff, or soft material, and it will fall whenever
2592 it becomes wet in the rainy season and causes slides and would cover the road up the first rainy season. We left that condition back where we first left the railroad west of Winter canyon, to avoid that condition.

2593 Monday, October 14, 1918.

CELIA GLEASON,

called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

I live in the city. I am librarian of the County Free Library. The County Free Library has a branch in the Santa Monica mountains at the
2594 Decker school house, near Decker's place. That branch library has been there I think about a year. I have only been up there once and that was when it was established. I think that was about a year ago. To get to the library at that time I had to go up through the Russell ranch over the trail. I tried to get permission to go by the coast. I applied for permission to Mr. Scotton. I had a conversation with him in regard to giving me permission to go through on that
2595 road. I asked permission to go and he refused.

Mr. Anderson: I move that that be stricken out as not responsive to the question. The question calls for a yes or no answer.

The Court: Can you answer that question? A. As to whether I had the conversation?

The Court: Yes. A. I did have a conversation.

Mr. Vallee: What was the conversation? A. In regard to giving me permission to go through on that road.

2596 Q. Will you tell, as nearly as you can, what you said and what he said? A. I beg your pardon. I asked permission to go and he refused.

Q. Anything else said? A. Yes, we talked considerably about it. I simply couldn't remember the exact words. I didn't go through the ranch that way. In this conversation that I had in which I say I don't remember what was said
2597 I did tell him that I was the county free librarian. On that trip by way of Triunfo we went in the machine to the Russell ranch and the Decker people met us with horses. We placed the bundles of books, and there being no horse to ride I walked in from the Russell ranch to the Decker school house. I should have gone since. I haven't gone because it takes too much time to go that way. To walk from Russell ranch to Decker's place, I think it took me about
2598 four hours; something over.

Cross-Examination.

We have records which show when we established that branch library. I can send that down to Mr. Burnell or Mr. Vallee. With reference to that trip, that was when the library was established. It was several months before that I had my conversation with Mr. Scotton, because I rather objected to going over the long trail. I didn't go out for several months after I had my conversation with Mr. Scotton, but I became

thoroughly conversant with the situation and how I would have to go and come, before I went. After making that investigation and familiarizing myself with conditions, I went, nevertheless. I walked going and coming. The reason why I walked on the return was that the horses were engaged, as far as I know. The horses that carried the books up when I walked up were engaged when I started back. There was no method that I know of that could be accorded me by any of those settlers in the way of a horse to come out. I don't know whether there was or not. I did not request a horse. There was none to ride out, because those that came down were needed. They sent down as many horses as they could. I didn't go any farther than that. The horses were needed for other work. Naturally I would not ask them to come down. I found out they were needed for other work because it was very evident. I didn't ask for a horse.

Q. Now, do you know as a fact that you could have gone in and out of that community within the last year in a wagon? A. Well, as I remember the road, I don't think I want to. I would not want to ride over it in a wagon. I have not heard that it has been improved. I don't know from my own experience whether there is a perfectly good road where I can ride in a wagon to that ranch. I have heard that it has been improved since I have had my exper-

2602 ience. I don't know to what extent, only by hearsay.

Q. If you had gone through the Malibu Ranch, did you expect to walk that way? A. I understood there was to be a mile and a half of trail if I went the other way. If I went the coast line there would be a mile and a half; if I went the Russell ranch there was something like eight miles. Either way I would have to walk some distance.

2603 I had heard that I could get up to the Decker road on the Malibu Ranch. I will furnish Mr. Burnell the date that I got there finally. It was several months after I had asked for permission. I didn't ask him again after that first interview.

Redirect Examination

By Mr. Vallee:

I waited the time I did after that interview

2604 with Mr. Scotton before I went up the first time because of the difficulty of the trip and the length of time it would take to go.

W. O. LOWE,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

I live in Los Angeles. My occupation is assistant superintendent of schools of Los Angeles

2605 county. There is a school district to the north of the Malibu mountains called the Decker district. There is a school house there. I can not tell you exactly when that school district was established; it was established before I came into the office and that has been seven years and it was before that. I think at the present time there are thirteen children in that district; I understand so. I do not know how long the school house has been constructed. It was constructed
2606 when I came in. I have made several trips to the school house in the last six years. I think during 1917 I went by Triunfo and through the Russell ranch on horseback, across the mountains to the Decker ranch. For the first three years I went up the coast through the Rindge ranch. I went from the Rindge ranch up to the school house, following the coast line to Corral Canyon past the point of rocks and on the sand
2607 and then further up until we got to what is called the Rindge ranch, about 25 miles north of Santa Monica and then there was a strip of sand again I should judge 2 to 4 miles and instead of going across the point with the road we had to go around on the sand that far and then from there went up the canyon and over the road, the old Decker road, to the Decker place. During the year 1917 I went to the school house in November, I think. I did not go up there during the year 1917 prior to November. The

2608 school usually began in September and we went up in the early fall or late spring. When I went in through Triunfo, I went through the Russell ranch and over the road where it passes a lake, over the trail, the trail that leads clear across Decker's. There is a ranch we passed there, the Mathieson ranch. My means of conveyance was horseback. I never went in with a wagon with a horse, always went on horseback and
2609 walked part of the way, from a mile to two miles; about a mile. It seemed to agree with me to walk part of the way. It was rather a hard ride over the steep mountains, especially one steep grade. The school house is a small one room building, about, I should judge, perhaps 15 by 16 or 18 feet.

Cross-Examination

By Mr. Anderson:

I can furnish Mr. Burnell the number of trips
2610 made in 1917. I did not at any time during the year 1917 make a trip up the beach road. Of children in attendance at that school in 1917, there were, I think, ten enrolled; perhaps an average daily attendance of eight or nine. The school teacher herself, last year, 1917, had two or three. The present school teacher has two. They are a part of the enrolled scholarship. Of those children there are three of the Decker children, perhaps, this year; there was five at one time. I think there are three of school age,

2611 the others were post graduates. This is located on the Charley Decker place. He let them have the land for the school house. A census of the district has not been taken for several years; that has been done away with. Fifteen children are required to establish a school house of that kind and in order to maintain it they must have five and a fraction. There must be more than five.

2612 Mr. Vallee: I have here a statement from Miss Gleason as to when the Decker branch of the County Free Library was opened.

Mr. Anderson: June 23rd, 1917. We will accept that statement and stipulate that she would so testify.

H. I. COMLLY,

a witness on behalf of plaintiff, recalled:

Direct Examination Resumed

2613 By Mr. Vallee:

At this point the witness was taken in detail over the entire right of way of the proposed road in the Main Road case, as such proposed right of way is shown upon the map placed upon the blackboard, such map being a duplicate of the map accompanying the complaint in said Main Road case as "Exhibit A" thereof. He testified in much detail, but in substance as follows:

That the proposed forty-foot right of way strip for said road throughout, and each part thereof, was and is located on the ground at the most feasible place in all instances, expense of construction, grades, and all other elements and surrounding conditions being considered;

That it would not be feasible, and in many instances it would not be possible, to change the selected, surveyed and proposed route or any part of it;

That said forty-foot strip right of way was and is located throughout in a manner which will be most compatible with the greatest public good, and the least private injury;

That each of the separate parcels sought to be condemned in said Main Road case is necessary to be taken in aid of the proper construction and maintenance of the proposed road, either for the purpose of a cut or a fill or both or some other essential use or purpose necessary to the proper construction or maintenance of said proposed Main Road; that unless each of them is condemned and taken the said road could not be properly constructed and maintained; and that each of said parcels is located in a manner most compatible with the greatest public good and the least private injury;

That all of this is true throughout the entire length of said proposed right of way for said Main Road, commencing at Los Flores Canyon

2617 at the southeasterly end of the same, and ending at the Ventura county line, which is the northwesterly end of the same, and traversing the entire length of that portion of the Malibu Ranch situated in the county of Los Angeles, including the part of said ranch belonging to the defendant May K. Rindge and the part thereof belonging to the defendant Rindge Company. The testimony of the witness in these regards was accompanied by many and elaborate reasons
2618 given by him in support of his opinions.

The witness testified that he doesn't know at what point there is a 12 inch pipe line after you cross Zuma canyon. We have it marked here a ten inch pipe line. That there is a bridge at the point where the proposed right of way crosses that pipe line. That he didn't think that the bridge was over all of the places where the pipe line is located. That about thirty feet of it is
2619 not covered by the bridge, as shown on the map. That all of this pipe line is under the ground at the present time he thinks but he doesn't know. That where it is not under the ground it is held up by being suspended on a wire or post, something like that. I don't recall exactly what it is. That this map doesn't show the construction of the bridges, or what is supposed to be for the bridges. That shows on the profiles. After the proposed right of way crosses the canyon, Dume Canyon, there appears on the

2620 map three concrete standpipes. There are two of them entirely within the proposed right of way, and one about half. That if he remembers right the pipe that feeds these concrete standpipes was a 20 or 24 inch concrete pipe. That he doesn't recall how far below the pipe is below the top of the ground. That to the north of the proposed right of way where the concrete standpipes are there is a hill that goes up to the mesa.
2621 That the matters which he took into consideration in locating the proposed right of way at that particular point were that he tried to get as far as we could from the north line. That they got to the foot of the hill and decided that that was the best location for it, at the bottom of the hill. That if they had located the proposed right of way further north on the hill or against the hill, it would have cost a good deal more for grading. That it would have cost a good deal
2622 more to place it on the side of the hill than it was to take the standpipes as they did.

That at the time they made their survey there was no road from Nicholas Canyon west until they came to the west side of Arroyo Sequit. From there on the road coincides with what the witness calls the proposed highway proposed by the board of supervisors. That from the west side of the Arroyo Sequit to the Ventura county line it coincides with what appears on this map

as proposed public highway by board of supervisors February 2, 1916.

That wherever possible and practical the proposed road was located so as to avoid the taking of trees or improvements, and so as not to interfere with watering places for cattle, and so as not to interfere with property that was or could be used for cultivation. That the matters taken into consideration in locating the proposed road from the eastern to the western end of the ranch were damages to the property, uniform grades, cost of construction, length of road, permanence, cost of maintenance, drainage, its present and future use, what would likely be hauled over it, and whether it was to be a through road or not. That where it was necessary to cross cultivated land, or land that could be cultivated, the road was located so as to leave as large pieces of land on either side as possible, and that wherever possible all of the land that was or could be cultivated was left on one side of the road. That the highest percentage of grade along the main road at any point was 6.5%. What the average grade is, is pretty hard to say. That he had not figured it out. That, in his opinion as a civil engineer and surveyor, the road is located in the location where it will be the least expensive to build, and that it is located where it will be the least expensive to maintain. That it is located where it

2626 will do the least damage to private property. That it is located where it will be the most permanent. That he means when he said he took into consideration the matter of drainage, that between Los Flores and the county line the road crosses a great many drainage areas and canyons. The drainage areas have to be taken into consideration. That with reference to the drainage areas, they had to locate the grades high enough to get in culverts and bridges and other
2627 drainage necessities.

The witness also testified to the same substance and effect, and with like detail, concerning the proposed forty-foot strip right of way for the proposed so-called Alisos Canyon road and the various parcels sought to be condemned in connection therewith; also that the highest percentage of grade on the Alisos Canyon road is fourteen per cent., and the average grade
2628 about eight per cent.

That the Los Alisos canyon road crosses Los Alisos Canyon once from its starting point at the main road to the north line of the Rindge Ranch. That it is in the bottom of the canyon. It crosses the creek once before it comes to the Rindge property line. After that it comes back again.

The Court: It terminates on the same side of the canyon that it begins on?

Mr. Anderson: Well, it crosses twice.

The Court: It all depends on what you mean

2629 by twice. It crosses from the east to the west and then comes back to the east again? A. Yes, north of the Rindge line.

The Court: North of the ranch line? A. Yes.

Q. By Mr. Vallee: Keeping inside of the Rindge Ranch, does the Los Alisos Canyon road terminate at the north Rindge line on the east side or west side of Los Alisos Canyon? A. On the west side of the creek and the bottom of Los
2630 Alisos Canyon.

Q. On the west side of the creek? A. Yes. It begins on the east side.

Cross-Examination

By Mr. Anderson:

On cross-examination, by Mr. Anderson, this witness testified in substance as follows:

That when he surveyed the proposed Main Road (from which survey map "Exhibit A" of
2631 the complaint was made) there was only one traveled road on the Malibu Ranch at its northwesterly end at the Ventura county line within five hundred feet of the ocean; that the nearest road there to the proposed right of way is the road indicated on the map "Exhibit A" as having been declared by the board of supervisors of Los Angeles county to be a public highway (all parties to these suits stipulating that it is not a public highway, and never became such), which road crosses the Ventura county line

2632 about four hundred feet north of the proposed right of way sought to be condemned for said Main Road in the Main Road Case; and that this is the nearest road of any kind to the said proposed right of way; and that such was the case when the said survey was made by the witness;

He also testified that the effect of building the proposed new Main Road and fencing it
2633 would be to wipe out as a road in some places the present private road upon the Malibu Ranch and now traveled through the Malibu Ranch from Los Flores Canyon to the Ventura county line, and to destroy it so far as its usefulness as a road is concerned.

The remainder of this witness's testimony upon Mr. Anderson's cross-examination related to the location of the proposed Main Road and the reasons for selecting the particular route
2634 surveyed and depicted upon said "Exhibit A"; and does not differ in substance from his testimony in that behalf on direct examination.

The witness was then further cross-examined by

Mr. Newby:

On this further cross-examination he continued his testimony concerning the location and routes of the proposed Main and Alisos Canyon roads, and his testimony in these regards did not differ materially in substance or effect from

2635 that given by him on the same subjects on his direct examination.

Q. By Mr. Newby: Don't you recall that it would have been entirely feasible from an engineering standpoint to come down the east side of the canyon, skirted the forest to the south and then struck this point without touching a single tree or anything but land? A. I don't think it would be possible.

2636 Q. But by that, you would have avoided these trees, and the irrigation standpipes? A. Yes, but we would have had to add to and make a more expensive road.

Q. Now, is that simply an opinion of yours or absolute calculation from a survey of the two locations? A. It is after a careful examination.

Q. What other engineering obstacles were there from continuing this road from Solstice
2637 Canyon in a general westerly direction along the territory there south of this proposed highway to Ramirez Canyon? A. Right west of Solstice Canyon there is a bluff about 300 feet high, very hard rock, that when it becomes soaked with water seems to have some action the same as the slaking of lime, and causes the cliff to fall off in large chunks. At the foot of this high bluff is a railroad right of way, and a track so close to the foot of this bluff that if we caused

2638 the location of a road along there, it would necessarily be within the limits of that bluff.

Q. How far west from Solstice Canyon does that 300 foot bluff reach? A. It commences about 100 feet west of Solstice Canyon and reaches to within about—about 1500 feet of bluff.

Q. Extending towards the west? A. Yes, sir.

"Q. What other engineering difficulties were
2639 there, other than the bluffs mentioned at a point 1500 feet west of Solstice? A. We have the same condition as in all other canyons, the control of water. Coming down, underneath that railroad right of way, and just west of there there is a place which is called a cienega, where the seepage water—there is a continual seepage of water on a sort of a sea mud, in formation, and that lies in a half moon shape, and is con-
2640 tinually sliding toward the ocean. It is at that little lake; there is a small lake west of Latigo Canyon."

"Q. Did you notice that the hill had sloughed off at the railroad? A. The whole hillside is gradually settling.

Q. Did you notice whether or not it had interferred with the railroad right of way? A. Some parts of the railroad are destroyed.

Q. At what particular point where the cie-

2641 nega is? A. It is carrying the railroad with it. This whole basin in here is moving.

Q. What is the length of that particular district affected by this sliding movement? A. About six or seven hundred feet along the shore line."

"Q. I notice there is a place here marked Marsh Land. Do you know whether there is a spring adjacent to the highway at that point? A. Just north of it.

2642 Q. What is the size of that spring? A. It is a very small spring. There was very little water coming out of it when we were there.

Q. Is it sufficient to water stock? A. I wouldn't say so, no.

Q. How far north of the highway is the place that you just referred to as little water running out? A. About 100 feet, as I remember it.

2643 The Court: At what station is that? A. That is about station 87 of division 2.

Mr. Newby: Has subsequent reflection, since 1906, caused you to change your opinion as to whether or not it would be entirely feasible to have kept this proposed highway on the south slope of the hillside from Solstice Canyon to Ramirez Canyon? A. Has my opinion changed?

Q. Are you now of the same opinion, that this is located in a better place than if it was kept on the south slope of the hill? A. Yes.

2644 Q. You see no reason to change your opinion on that? A. No."

"Redirect Examination

By Mr. Burnell:

The witness testified that on cross-examination he was asked as to the location of the road existing on the ranch in connection with the proposed road, and that he testified that in certain places portions of the present road would be
2645 crossed and taken by the new road. That the crossing or the taking of these portions of the present road would not prevent the use of the remaining portions of that road in connection with and as a part of the new road. That the present road, the one that the court and jury traveled over to inspect the premises, extends from one end of the Malibu Ranch at Las Flores Canyon to the other end at the Ventura County line; and that it bisects the ranch into portions
2646 north and south. That the present road which the court and jury traveled over to inspect the premises crosses cultivated land. He observed land in actual cultivation, lying to the north and some to the south of the present road. That the present road goes through cultivated land in certain portions of the Rindge Ranch which the new road will leave by going up through the hills, as, for instance, where it goes around Latigo and Escondido Canyons. That the present road is so constructed that the grades going down into

2647 and out of the canyons were, in his opinion, as an engineer, that it is not a practical road for the purpose of ordinary public travel. That the location of the proposed road that the county is seeking to acquire by condemnation eliminates that condition at those canyons of the sharp turns and steep grades down through the canyon and a sharp turn at the bottom and the steep grade coming out the other side, and the
2648 sharp turns, to a great extent."

"That it would be possible for the owners of the Rindge ranch to use this old road that is now used, provided this proposed highway is condemned and fenced on either side, by having gates at all these intersections if they felt that it was necessary."

"Q. Have you examined and familiarized yourself with the condition of the railroad tracks on the right of way through the Malibu?
2649 A. Yes.

Q. What in general is the condition of that right of way? A. It has had a great deal of it destroyed.

Q. Now can you tell me, from your observation and study what was the cause of the destruction? A. Some of it was due to the action of the sea, some of it was due to washes at the canyon, and some of it was due to slides.

Q. Now I will ask you if you have located the proposed canyon road alongside of the right

2650 of way of the railroad, whether or not in your opinion those same conditions you have described as having injured the railroad, would have affected the county road? A. It would.

Q. What would be the effect? A. The road would be destroyed, the same as the railroad.

Q. Was that taken into consideration in that location? A. Yes.

Q. Now, in planning your bridges, culverts and pipes, did you or did you not allow for a
2651 factor of safety in figuring the water space and capacity for each culvert and pipe? A. Yes.

Q. In every instance? A. Yes.

Q. I suppose by that you mean that you made them large enough to take care of more water than you believed from your examination and study of the conditions and drainage area, the size of the channel and the other factors would actually be presented for drainage? A.
2652 Yes."

"Q. Regarding the location of the railroad right of way, do you say that that was or was not a good practical location for a railroad? A. Did I say it was or was not?

Q. Yes; would you say it was or was not a practical location? A. It was not.

Q. Why not? A. Because it is almost entirely destroyed at the present time by the elements."

2653 "Q. Explain what you mean by 'clearance.' Is it distance between the bottom of the highway and the bottom of the creek? A. Bottom of the bridge and the bottom of the creek."

He further testified on this cross-examination:

That a bridge across the Malibu Creek (near the mouth of the Malibu Canyon) was provided for in the county's road plans, being a 600 foot pile trestle bridge—a combination bridge with
2654 seven or nine thirty-eight foot spaces or spans, trusses, with fourteen nineteen-foot trestle spans, with a height of twelve feet above the surface of the earth, upon driven piles placed at right angles to the flow of the stream, which was a proper and sufficient bridge for the purposes in connection with the construction of said Main Road for which it was designed.

Certain profiles made in connection with the
2655 survey of the said proposed right of way in the Main Road Case were then produced by the witness (and subsequently introduced in evidence as appears hereafter), and, testifying from them on further cross-examination, he described and testified to the following bridges provided by the plans for the construction of said proposed Main Road, each of which he testified was necessary and each of which, he also testified, was properly planned for the purpose for which it was designed:

2656 At Corral Canyon: A bridge consisting of one standard fifty-foot wooden deck truss, four standard nineteen-foot trestle spans, two concrete piers under the fifty-foot deck truss, and two wooden piers set in concrete; wooden bulkheads and wings, with posts set in concrete, the entire length 126 feet, and highest point above the bottom of the canyon thirty-six feet, with a clearance of 28 feet.

2657 At Carbon Canyon: A trestle bridge, 38 feet long, and ten feet in the clear above the creek bottom;

At Los Flores Canyon: The westerly end of a forty-foot trestle bridge, its greatest clearance being nine feet;

At Solstice Canyon: A trestle bridge, 138 feet long, with a maximum height above the floor of the canyon of 28 feet; with a clearance of nineteen feet;

2658 At Latigo Canyon: A cattle pass, one 8 foot trestle span, in connection with which the witness testified that it was built purposely for a cattle pass; but that all of the bridges provided for were cattle passes; that this was the only special cattle pass provided; that he had had experience as to whether cattle would pass under the bridges that have been constructed over the ranch roads; that he had seen them pass; that the sides of the canyons were not so steep that they could not get under the bridges;

2659 At Escondido Canyon: A 138 foot trestle bridge, with a clearance of twenty-three feet;

At Ramirez Canyon: A trestle bridge 114 feet long, with a maximum clearance of seventeen feet;

At Dume or Zuma Canyon: A combination pile and trestle bridge, 152 feet long with a maximum clearance of nine feet, in connection with which and the continuation of the road west-
2660 erly and immediately adjacent the witness testified that the proposed road and bridge would necessitate the removal of a part of a pipe line and certain standpipes of a water system of the defendant Rindge Company; but that this could be done at an expense of about two hundred dollars; that it was feasible to move the standpipes without tearing them down and reconstructing them and that such removal would not injure the operation of the water system;

2661 At Trancas Canyon: A combination pile and trestle bridge 209 feet long, with a maximum clearance of nine and one-half feet;

At Encinal Canyon: A thirty-eight foot wooden truss bridge, with a height above the canyon of 23 feet, clearance 21 feet;

At Canyon Just East of Luchusa: A seventy-six foot truss and trestle bridge, with a clearance of 24 feet;

At Los Alisos Canyon: A fifty-seven foot truss bridge, with 21 foot clearance;

2662 At Nicholas Canyon: A thirty-eight foot wooden trestle, clearance 16 feet;

As Sequit Canyon: A combination pile trestle bridge, 152 feet long, with a clearance of five feet;

At Flat Rock Canyon: A culvert. A 60 inch pipe, 180 feet in length;

At Steep Hill Canyon: A culvert. A 60 inch pipe, 100 feet in length;

At Latigo Canyon: In addition to cattle
2663 pass, a 30 inch pipe 80 feet long for drainage;

At Walnut Canyon: 60 inch pipe 90 feet long. That there was no necessity for a bridge here;

Unnamed canyon west of Encinal: A 24 inch pipe 90 feet long;

Canyon between Los Alisos and Nicholas Canyons: A 24 inch pipe 80 feet in length;

Canyon just west of Nicholas Canyon: A 48
2664 inch pipe 130 feet in length.

At this point the following further proceedings were had and taken:

J. W. F. DISS,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

My voting residence is Escondido Canyon, Los Angeles county, in the Santa Monica moun-

2665 tains. I am a ranch and broker and divided my time between that, incidentally doing some literary work, so-called. I am familiar with the Santa Monica mountain country east of the Ventura county line and north of the Malibu Ranch and south of the state highway. I have known that country about sixteen years. The road that runs easterly from Cornell, first, in a rather southeasterly direction, and then easterly, I have traveled between Calabasas and Cornell
2666 Junction. I can't place exactly when; some time ago, several years ago; I should say two or three years ago; about three years ago.

Q. Describe the road as you saw it on that occasion.

Mr. Anderson: Object to that as too remote, if the court please.

The Court: Overruled.

(Exception No. 44.)

2667 A. The road leading in from Calabasas in through that country to the Cornell Junction was a road at that time when was practically impassable for automobiles. It was used as a teaming road, and even at that it was not a very good road.

Q. Now, Colonel Diss, will you kindly describe the road from Calabasas? Step down and use the pointer. Describe how you went from Calabasas to Cornell. Triunfo is indicated by the circle on the state highway and

2668 Cornell, I have already shown you, and here is Calabasas on the map and Dry Canyon is here. A. To the best of my recollection, at the time we made that trip through there, there was only one trip because of the roughness of the country, we came down through this way and came directly west to this junction point here (indicating on map).

Q. Just a moment. The witness indicates
2669 the road leading south from Calabasas through Dry Canyon to the junction of the roads in Dry Canyon, one of which leads to south and one west, thence westerly directly under the elevation figures "613" in a general westerly direction to where the road turns south; thence south to just above the word "creek" in the phrase "Coal Creek"; thence westerly to a point just below the word "Stokes" in "Stokes Canyon"; thence southerly to the junction of another road
2670 which runs southeasterly a little bit east of the "C" in the word "Canyon" of the words "Triunfo Canyon"; thence westerly the road being just above the word "goat" in "Goat Buttes" dipping to the south and turning to the west, turning to the north, turning to the west at its junction with a road that leads north to the junction of the Ventura road of the state highway, known as the Vejor road; thence westerly; thence in a generally northwesterly direction to Cornell. Now, is there anything further that

2671 you can tell us about that road, Colonel? You may just resume the stand. A. It was badly cut up and many breaks in it, which made traveling extremely difficult. It was an up and down road. There were no very long level stretches that were appreciable. In quite a few places it was extremely steep. I can't remember exactly where they were. I know we went up some approaches that were almost impossible for us
2672 to get up. It took some considerable effort for us to climb them. We were driving in a spring wagon, two horses. I am somewhat acquainted with the use of the automobile. I drive a machine myself. I have had a little bit of experience in driving. I have driven about eight or nine or ten years. I don't have any idea of the number of miles I have driven in an automobile —eighty or a hundred thousand; maybe more. From my experience in the use of an automobile
2673 and driving one, I would not say that is a road that could be driven with an automobile, not at the time I was over it.

Cross-Examination

By Mr. Anderson:

That is the only trip I ever made over that road. I think it was in the neighborhood of three years ago. I had a man named Dominguez with me at the time, driving with me; no one else. I was going out to look at some land that was cited me near Cornell. After we

2674 reached Cornell we went back by the Russell ranch, towards Triunfo, and out that way. We found a pretty good road out that way, if you eliminate ditches and creeks and things of that kind. If you eliminate the streams of the winter it was a passable road. There were no serious grades on the road.

M. D. BEATTY,

called as a witness on behalf of the plaintiff, be-
2675 ing first duly sworn, testified as follows:

Mr. Burnell: I think we can agree with counsel and save some time. Miss Beatty is a deputy county clerk and assists Mr. McPherrin in acting as clerk of the board of supervisors, and she has produced here certain records of the board and those records show that bonds were authorized to be issued by an election held in the Decker school district.

2676 Mr. Anderson (interrupting): The election being held pursuant to a resolution of the 14th day of January, 1918.

Mr. Burnell: That is the resolution of the board of supervisors.

Mr. Anderson: Yes, and that election was held on the 18th of February, 1918. Now, before proceeding, or stating the effect of that, we are going to stipulate, subject to the objection that it is immaterial, irrelevant and incompetent, in so far as the main case is concerned, because

2677 it was held eighteen months after the resolution, upon which the main case is based; as far as the Alisos case is concerned, that is not the case; but we also object to it generally as to all three cases as being incompetent, irrelevant and immaterial. The mere fact that the school district may or may not have issued bonds—

The Court: I think it is irrelevant as to the beach road, so-called, but it is relevant to the other.

2678

(Exception No. 45.)

Mr. Burnell:

Yes; to go further, it is stipulated that the election was held pursuant to proceedings duly had in the school district, February 18th, 1918; that the issuance of bonds was voted at that time for the building of the new school house, and that those bonds have been actually issued and actually sold.

2679 The Court: Then, gentlemen of the jury, you will understand that it will be so understood as though Miss Beatty testified to that.

Mr. Anderson: Now, as to the Los Alisos—

The Court: It will be of course only considered by you, it will be considered only with respect to the Alisos Canyon road and the Main Malibu Road. It has no relevancy or materiality as to the beach road.

(Exception No. 46.)

2680 Mr. Burnell: We will connect it up further by again putting Professor Lowe on the stand.

W. O. LOWE,

recalled on behalf of the plaintiff, having been previously sworn, testified as follows:

Direct Examination

By Mr. Burnell:

I testified the other day that I was assistant superintendent of county schools, and that I am
2681 familiar with the Decker school district and the Decker school house. There has been action taken by the school authorities in regard to building the new school house. It was voted on in February, I think, of this year, and the bonds sold in April of this year. I refer to bonds of the Decker school district. The present school house, the one I described the other day, is not sufficient in size and accommodations for school
2682 purposes in that district. It is hardly large enough for the number they have at the present time.

K. A. MILLER,

a witness called in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

I reside in the city of Los Angeles and have lived here thirteen years. My occupation is at-

2683 torney at law. I am acquainted with the country to the west of the Ventura county line and lying along the coast. I am familiar with the country known as the Yerba Buena settlement. I own property in Ventura county west of the Ventura county line and near the coast. I own, I think, about 2½ miles of water front between the holdings of the Rindge ranch and the Guadalasca, connecting up the two. It would be
2684 right here, where Little Sycamore Canyon, or what is called Little Buena Canyon is, at a point marked 16 on the map (Exhibit 6) adjoining the property of the Rindge Company and running up to, practically to Big Sycamore, all excepting about one-quarter—40 acres.

Q. How far does your land extend northerly from the sea coast?

Mr. Anderson: At this point I am going to make the objection that I have made to all of the
2685 witnesses who testified as to conditions westerly of the Ventura county line, on the ground that there has been no foundation laid; in other words there has been no showing made yet that there is any approach from that section, or any means by which they can reach any part or portion of the three roads.

The Court: Same ruling.

(Exception No. 47.)

A. I also own 160 acres here on Little Sycamore, about a mile and a half or two miles from

2686 the ocean. It would be right up in here in this circle that is surrounded by the red figures.

Mr. Burnell: I will ask Mr. Scotton to kindly indicate the property of Mr. Miller. A. It belongs to Mr. Houston.

Mr. Anderson: I presume it will not be necessary to renew my objection?

Mr. Burnell: No, it will be understood that it applies to all of the testimony.

Mr. Vallee: All of his testimony with refer-
2687 ence to this particular map (Exhibit 6)?

Mr. Burnell: Yes.

Mr. Scotton: It will be X-31.

Q. By Mr. Burnell: I will ask Mr. Scotton to indicate on the map or put another mark on the other property of Mr. Miller, in between Little Sycamore and Big Sycamore.

Mr. Scotton: I have placed a green cross in the southeast one-quarter of section 15 and
2688 marked it 31 in red, indicating one of the parcels that Mr. Miller states that he owns. I have also placed a red cross and marked it 32, in red, at the western boundary of Mr. Miller's property, so stated, which property he states extends easterly to the point near the red circle marked 16, which is the western boundary of the property of the Rindge Company along the coast in Ventura county.

(Continuing). The location of my property has been indicated with approximate correct-

2689 ness by Mr. Scotton on the map. I own in that parcel, the property which Mr. Scotton has marked with the green cross and the circle 31, 160 acres; in the piece at 32, 500 acres. Some of that property is in cultivation. I don't think there is any of it in cultivation this year, but it has been up to this year. I don't think there is any of it in cultivation this year; I would take it twenty-five to thirty acres has been in cultivation. I should say out of all of it, not to exceed
2690 75 acres is suitable for cultivation. Some of it is suitable for grazing cattle. I have cattle on the land until this year; I suppose there was thirty or forty head; the tenants had them. There is a reason why I ceased cultivation and ceased having cattle on the land since last year. We couldn't get in and out, no roads.

Q. Now at any time, Mr. Miller, has there been any road which you have used to get in and
2691 out of that property? A. When I first became familiar with the property back in 1909, or 1910, I went up the coast, the road that goes up the coast through the Malibu Ranch.

Since August 1st, 1917, I have gone to or from my property by the Malibu Ranch once. That was about August or September of 1917. I went through the Malibu Ranch at that time; I got a pass over it. I think I got it through Mr. Scotton, or somebody else got it for me. It was from one of the owners of the Malibu

2692 Ranch. There is no road, or other way, by which it is possible to get in or out of my ranch than through the Malibu property. I have tried to.

Q. When was that?

Mr. Anderson: We object to that as immaterial, if the court please.

The Court: Overruled.

Mr. Anderson: That is it was in the nature
2693 of cross-examination. He asked him if there was any other way.

The Court: Overruled.

(Exception No. 48.)

A. Well, since we were prohibited from going through the ranch property, or the Malibu property, the last two or three years; and I investigated the roads prior to that time to see if there was any way out or in.

Q. And you found there was none? A. No,
2694 I found there was none except to walk.

The only way you can get out of there, except going through the ranch property, is going up Sycamore canyon, Big Sycamore, or Yerba Buena, and then you wind around the tops of the hills on the mountains and get out. There is no road—a trail, not a trail that you can get a wagon over. In some places it is almost impossible for a horse to go up and down it. You have to lead it. I am acquainted with a road that has been referred to here by some of the

witnesses as the Mondell road, and by others as partly the Mondell road and partly the Marion Decker-Jasper Thomas road. I know where it is. I went over that road prior to the Rindge Ranch being closed; you can travel that clear down through Ventura county. That comes down by Mondell off the hill and comes down into the mouth of Yerba Buena Canyon, or Little Sycamore, and then turns to the west and comes down to the coast and down to the Ventura county line. That road has been opened up ever since I have known the country; that has been open since 1909, I know.

Q. Has anyone ever stopped you from traveling over that road?

Mr. Anderson: Object to that as immaterial.

The Court: Overruled.

(Exception No. 49.)

A. No; there was no interference there.

By Mr. Burnell: There were no obstructions on that road so far as I know, no gates. I have passed through the Malibu Ranch on the way to and from my property probably a dozen times. On those occasions I observed railroad tracks upon the Malibu Ranch.

Q. State whether or not you ever saw any trains on those railroad tracks.

Mr. Anderson: Object to that on the ground that it is immaterial. All of that matter about the trains on the Malibu Ranch was developed

2698 entirely on the cross-examination of Mr. Scotton, and is not material to any part of the issue here at the present time, so far as necessity is concerned. This particular right of way, I think we can state with correctness, the proposed road only involves less than three acres of this particular 60 foot right of way where this road is constructed, and it seems to me it is a waster of time to go any further into that railroad situation.

2699 The Court: It is all cumulative evidence. We are getting a lot of cumulative evidence here on matters the issue of which is not very seriously contested. Overruled.

(Exception No. 50.)

A. I have seen freight cars. My recollection is they were never pulled by an engine; they were pulled by mules or a team. Some of them may run down the grade of their own

2700 momentum. They would haul them up the grade, and then they would run down themselves.

Mr. Anderson: I ask that the answer be stricken out. The question was what kind of motive power and to describe the cars. A. They were just plain flat cars.

The Court: Motion denied, taking into consideration the witness is a lawyer.

(Exception No. 51)

2701 By Mr. Burnell:

I am acquainted with some of the trails or paths lying east of the Ventura county line and north of the Malibu Ranch and south of the state highway. I am acquainted with the northern portion of a road or trail that runs from the old Topanga Canyon road westerly to Stokes Canyon and Cornell, indicated on this map (Exhibit 6) by the yellow line, from Cornell
2702 east; that goes through the Crags country, at the head of the Malibu Creek. I am familiar with that. That is the road that is indicated in yellow on the map (Exhibit 6). I have traveled over that road two or three years ago, I would say in August of 1914. That is about four years.

Mr. Burnell: What was its condition at that time?

Mr. Anderson: Object to that as too remote.

2703 Mr. Burnell: It is only two years before the suit was filed, and it was only a year and a half before the resolution.

The Court: Overruled.

(Exception No. 52)

A. Well, there isn't any road.

I am familiar with the use of the automobile; I had an automobile but I couldn't use it. I didn't take it into that country. I took it as far as I could and then I got a horse. I have been familiar with the use of the automobile

about 10 years. I drive one myself; I have driven one for 8 years. I would absolutely not say that the road that has been established there was a safe road that could be used by automobiles. There was no road at that time that could be used through that country by an automobile. It was a road up hills and canyons and through a country that it is impossible to build a road or keep it up, after you build it.

Mr. Anderson: I move that that be stricken out as a conclusion of the witness, that it is impossible to build it or keep it up, no foundation laid.

The Court: Motion denied.

(Exception No. 53)

Cross-Examination

By Mr. Anderson:

I say I made this trip August of 1914. I came up to Triunfo, on this state highway (indicating on Exhibit 6). I know where Triunfo is; that is on the Russell Ranch. I started over here from Triunfo; I had just a horse. I went first over into the Decker settlement. I started toward the ocean in the direction of the Decker place. Following the road from Triunfo, it was a trail most of the way. It commenced whenever you leave the Russell Ranch. Going south, part of the way we traveled by wagon a mile or two, probably one mile out of every two. There

2707 would be a break where the road could not possibly be traveled by wagon. I went by Cornell. From Triunfo to Cornell there was one mile in every two that could not possibly be traveled by a wagon; it may have been there was more than that; I am not familiar with the point between the place I was traveling.

Q. I mean to ask you about two definite points, from Triunfo to Cornell; would you say
2708 there was no road excepting one mile in two at that time? A. Well, it is a little more or less.

Q. Give us your best idea how much more? A. I wouldn't say there was more than half of it was passable by wagon. I mean safely passable.

Q. Passable at all; was there any part of it that was impassable? A. Evidently there was, because there was one man turned his wagon over.

2709 Q. I am asking you, for your recollection, if it is that there was a trail or road from Triunfo to Cornell that was absolutely impassable to a wagon? A. Well, now, that would depend on the man handling the wagon.

Q. You have undertaken to testify about the character of that road. You have testified that a certain road was impassable and that it cannot be built or maintained. A. What I mean is at an economical cost.

2710 Q. Is this particular branch of the road—was there any portion of the road from Triunfo to Cornell in that trip you made in 1914 or 1915 whenever you did mention, over which it was practically impossible and over which it was impossible to drive a horse and team? A. Yes. That distance was an appreciable distance, practically about half the way.

Q. Now, from Cornell where did you travel, from Cornell, after you left Cornell, which is
2711 at the point indicated by the circle and the name—that is Charley Decker's (indicating on map). A. I am only using this for the range. From there on I was hunting. Then I rode into the canyon and then we camped here, and I was out the next time, and I was down here, to the Crags Country Club. I know that it is at the head of Malibu Creek. I am not familiar with the streams nor the country or its different
2712 places. I didn't go beyond the Crags Country Club. The Crags Country Club was the limit of our trip, on that occasion. I have never been beyond it at any time, excepting at Malibu Creek. I was there fishing or for some other purpose. From Cornell to the Crags Country Club I do not think the portion of the road which I saw going by, is practical as a road to be maintained or built. It could be built but I do not know about its being maintained. It is practical. I have never been to the Crags

2713 Country Club excepting on that one occasion. I went back and then came over the hill and went over Los Alisos Canyon. I came back here to the Decker place and through Los Alisos Canyon and down Los Alisos Canyon to the ocean. I came across Los Alisos Canyon on horseback. It was one of the roads I came over, where it had been built by the Rindges.

Q. How do you know it had been built by the Rindges? A. I saw a road built there
2714 and I went over it afterwards where they had blown it up.

Q. That is the road that goes to the Ernest Decker place, isn't it? A. I think it is the road that goes to the Charley Decker place.

Q. Now what road went into Charley Decker's place excepting the one through Encinal? A. Over at Los Alisos Canyon you meet it, you can come down to Charley Decker's place,
2715 down the canyon or across the ridge, and come in below Los Alisos Canyon. It is a pretty hard road. Where it was blown up it was a wagon road. It is called the Los Alisos Canyon road; it may be on the hog back and it may not—I don't know. That is the road I understood was the Charley Decker road. Straight down the canyon—down Los Alisos Canyon. We have to cross the range, to make that one. I am familiar with the Charley Decker place, not with the Ernest Decker place. From Cor-

2716 nell back to Charley Decker's place the road or trail that I took was not any defined road; some places it was a trail, and at places I found a wagon road. From Cornell southwest I found a continuous road; some places, two or three miles. You might say for some purposes of travel it was interrupted and others it would not be a road at all. It was not what we call a road, which could be safely traveled—for peo-
2717 ple to get out and in—I would not call it a road. There was no evidence that wagons had gone over it clear to Charley Decker's.

In getting from Cornell back to Charley Decker's place, it was not any defined road, some places it was a trail and some places from Cornell to the Charley Decker place I found a wagon road. From Cornell southwest I found a continuous road, in some places two or three miles. You might say for some purposes of
2718 travel it was interrupted and others it would not be a road at all, what we call a road, which could be safely traveled—for people to get out and in—I would not call it a road. There was no evidence that wagons had gone over it clear to Charley Decker's. I don't know Mr. Vaughn's place, indicated by X-5; I don't know where it is; I know where the school house is.

Q. How close did the road come to that?
A. Quite a ways.

2719 Q. Well, how far? A. After you leave the turn in the road, where it goes down the road and undertakes to go into this canyon, there is practically no road. There was not at that time; there was not last year. I made a trip over that last year to Charlie Decker's.

Q. Which way did you travel, by Cornell, or what is now known as the Decker trail? A. I don't know anything about Cornell.

2720 Q. Well, we have been talking about Cornell all the afternoon. A. Excepting on the map; people live along there in houses.

Here is Triunfo, you come over through Russell Ranch and down through here. After you get over six or seven miles and start up the mountains you have got a trail; it is a kind of a wagon road, but it is narrow, four or five feet wide; it has been dug out by the people in that community, but it is very, very steep. My

2721 last trip was made partly over the same route as my trip in 1914. Last fall when I was to Charlie Decker's I didn't go down that way.

Q. In getting to Charlie Decker's from Triunfo, after you reached the point here at Cornell, you took practically the same route as previously, and saw no change or improvements? A. There had been some digging.

That is the only route that I have taken to get from Triunfo to Decker's.

2722 Q. Is there a road known as the Mondell road? A. No, we have a trail; there is a trail from here—it comes down here, and through to Santa Monica (indicating on map).

That cultivated land is over here about half way between the western and eastern terminus. Between the red 16 and 32 and over in 31.

Q. In so far as your cultivated land is concerned, between red 16 and 32, so far as that is concerned, is there any road from that point
2723 to the Mondell road? A. Yes, we strike the Mondell road down here at the mouth of the Yerba Buena Canyon.

Q. Indicate where the wagon road runs to that point. A. Here is the land adjoining, the west boundary of the Rindge Ranch, which is the mouth of the Yerba Buena Canyon. Now that is comparatively flat country, that road is connected up with the road that comes down—

2724 Q. Oh, I am talking about a road from that point to your cultivated land. A. I am talking about the cultivated land in section 17 at point 31.

Q. But I am talking about between 16 and 32. A. You have got to come down the ocean front.

Q. That is the only means of travel? A. Excepting a trail that is built up on the side of a hill, to carry a horse, it is the only way you

2725 can get in or out; that trail has been there a number of years.

Q. As a matter of fact the beach, in many places, is impassable, isn't it, from that point down to the beach road? A. It is, at low tide places, where you can get through; it is only about a half a mile anyway and you can go from Deer Canyon down to the Mondell road. Q. That is the only way, and your only means, excepting a pack trail? A. At certain
2726 hours a day you can use it.

Q. Do you know where Point Magu, Little Magu, is? A. I don't know where it is.

Q. Isn't there a large promontory on [redacted] ranch? A. No, sir. It goes straight up and down, but in front of it is a surveyed road.

Q. Is it east of Dry Canyon—east of Dry Canyon is there not a large promontory that prevents passage on the beach? A. No.

2727 I have traveled the beach with a wagon two years ago, going to the ranch. I got through up the coast, up through the Malibu Ranch. I believe for three days we were in front of the Malibu Ranch, stuck in the sand. That is the time they would not let us go through.

Q. I understood you to say that you had been over that ranch road only once in three years. A. Oh, no; at that time I didn't go over it anyway. I didn't go over their land at all.

2728 Q. You went over what Judge Oster decreed to be a public road? A. Wherever I could get off it. We had a four-horse mule team, and wherever they didn't run us off, wherever they didn't come out with their guns and chase us, we went down on the sand and pulled through the sand.

Q. Exactly. There was private roads recently constructed which they did not permit you to use on that trip? A. However, we had
2729 used them.

Q. Yes, when they were broken through, you used them until you were stopped by injunction? A. I don't know how they were stopped; but they raised a lot of trouble. That is what I say about the trouble with the roads.

Q. You don't know anything about that injunction suit concerning those private roads, with all your familiarity with that country?
2730 A. Yes.

Q. You know that the court had enjoined the use of those private roads? A. I know they enjoined the ranch from interfering with the travel over the road.

Q. Don't you know that the court had enjoined them from using the road, that the suit of the Rindge Company had resulted in an injunction? A. Probably I was familiar with it at the time.

2731 Q. Were you when you were going up there with this six-mule team? A. The last time?

Q. Two years ago. A. I don't know anything about it; I didn't know about it then I don't think. I wouldn't say, because when I went up there, I usually got from Mr. O'Melveny or Mr. Scotton, or Mr. Lantz, or somebody else—I would get a pass. When the matter would change and people would say that the travel was all right, then we would go up.

2732 Q. Will you answer my question. Did you, or did you not, when you were up there two years ago with a six-mule team know that there had been an injunction suit brought by the Rindge Company against Fitzpatrick and others in which the court had enjoined the use of these private roads? A. Not unless I was told by somebody. I did not know of my own knowledge.

2733 Mr. Anderson: Well, were you told by somebody? A. I don't know whether I was or not.

K. A. MILLER

(Recalled)

Direct Examination

By Mr. Burnell:

Q. Mr. Miller, I understand you want to correct your testimony in one particular; is that so? A. As to the road leading from the Decker place down to the ocean, this (indicating

on map) instead of being Los Alisos Canyon is Nicolas road, about half way between the Nicolas Canyon and the Nicolas and Los Alisos Canyon.

Q. That is, Mr. Miller, you are referring to the road or path, you told us yesterday you traveled in on from the Decker place down to the coast. A. Yes, sir.

Q. And the road is known as the Nicolas road and not Los Alisos Canyon? A. No. There is a trail down Los Alisos Canyon. You can come down that road. The particular road is the road that goes up past the school house and along on the Nicolas flats, through the large potroro there, and then you come down the road to the ocean. That is the Nicolas road.

Mr. Burnell: That is all.

Cross-Examination

By Mr. Anderson:

Q. Mr. Miller, you say there is a trail down the Los Alisos Canyon? A. Yes.

Q. It is not a wagon road? A. No.

Q. Just a place you can walk? A. Well, I have traveled down. You can ride horses.

Q. Did you ride a horse? A. Well, I walked down but I would meet people on the trail going back and forth on horses.

Q. Who did you ever meet on that trail horseback down Los Alisos? A. I beg your pardon.

2737 Q. Who did you ever meet on that trail horseback down Los Alisos? A. I met the Rindge line riders coming up through there.

Q. The line riders—they were riding up and down along the boundary line? A. Well, on the trail. They were coming up the trail and they were not on the Rindge property at the time.

Q. How many times have you met those line riders? A. I only met that particular man
2738 once.

Q. How many other people have you met on that trail down Los Alisos riding on horseback? The trail you say you walked. A. Mr. Fitzpatrick. He rode down; he was with me.

Q. You and Fitzpatrick rode down together? A. Yes.

Q. You, of course, know Mr. Fitzpatrick pretty well? A. No, I don't. I just met him
2739 that time I was through there.

H. I. COMLY,

recalled.

Cross-Examination.

Mr. Anderson: If the court please, during the progress of the examination, I think of this witness, he supplied us with a table showing location and length of (the present) traveled road within the new proposed right of way of the new Malibu road shown on county sur-

2740 veyor's map No. 8070, the map that is Exhibit A of this complaint; the distances are scaled. Now, I don't think that was put in evidence. I think it was merely supplied.

The Court: My recollection is that it was; if it was not, it may be put in.

Mr. Anderson: Yes; we would like to offer it.

The Clerk: That will be Defendant's Exhibit 14.

2741 (Included in exhibits to be certified up.)

Mr. Anderson: Now, if the court please, at the close of the examination of Mr. Comly, we referred to a number of those profile maps and we wish to offer those profile maps in evidence, with the understanding, as I think we have agreed with Mr. Burnell, that they may remain subject to the call of the court, and if necessary blue prints will be substituted. Did I so under-

2742 stand you?

Mr. Burnell: Yes.

Mr. Anderson: I don't remember how many of those there were, but whichever were referred to.

The Court: They were referred to by Mr. Comly by number, county surveyor's number.

Mr. Burnell: It is understood, Mr. Anderson, that your offer refers to the profiles of the proposed Malibu road from the east end of the ranch to the Ventura county line?

2743 Mr. Anderson: Those about which he has been examined in the last two days.

Mr. Burnell: Yes.

Mr. Anderson: Do you know how many of them there are?

The Witness: Seven.

Mr. Anderson: Numbered 1 to 7, and they will be Defendant's Exhibits 15-A, 15-B, 15-C, 15-D, 15-E, 15-F, 15-G. (To be certified up by the clerk.)

2744 Mr. Anderson: I wish at this time to first make an offer of certain portions of the proceedings in the case No. 59557, entitled the People of the State of California, plaintiff, versus May K. Rindge, administratrix of the estate of Frederick H. Rindge, deceased, May K. Rindge and N. D. Darlington, defendants. The offer will include the date of the filing of the complaint, the date of the original decree,

2745 the date and contents, that is, certain of the contents of the original decree, the date and contents of the order with reference to a motion for a new trial, and the subsequent action by Judge Parker of Mono county as to the roads from Lachusa Canyon to the Ventura county line. That is for the purpose of getting in the matter in the nature of injunctions and the nature of the proceedings in that case.

Mr. Burnell: To all of which the plaintiff objects, on the ground that it is incompetent,

2746 irrelevant and immaterial; on the further ground that none of the proceedings had in the case of the People against Rindge were *res adjudicata* as between the parties in the present action.

Mr. Anderson: Of course, I don't offer them as *res adjudicata.*

The Court: No, I understand, I think they are relevant, especially in view of the testimony on the part of the settlers as to the injunction. Overruled.

2747 The Court: I understand that you are now proceeding in rebuttal.

Mr. Anderson: The complaint was filed on the 16th day of December, 1907, in the Superior Court of the state of California, in and for the county of Los Angeles, and is entitled the People of the State of California versus May K. Rindge, testatrix of the estate of Frederic H. Rindge, deceased, *et al.*, and it recites in the first paragraph that there is now and for more than

2748 thirty years last past there has been a certain public road in the county of Los Angeles, state of California, extending from the city of Santa Monica in a northwesterly direction along the shore of the Pacific Ocean to the boundary line of Ventura county, and that such road is 40 feet in width and that the road is more particularly described as follows, and then there is a description commencing in Santa Monica at the foot of a certain bluff, then there is a long

2749 description which carries it up to the ranch line and through the ranch line, and I believe we have stipulated that the road as shown on the map is the road declared by resolution of February 2nd, 1916, to be a public road, by the board of supervisors and is substantially the road covered by the complaint in this suit.

Mr. Burnell. The road in this present suit?

Mr. Anderson: No, the road in this suit I am reading from. In other words, the north-
2750 erly line of the road decreed by the board of supervisors on February 2nd, 1916, and appearing on that map is the road which is here involved in this action I am reading from, so far as it runs through the ranch.

Mr. Burnell: Up to the Ventura county line.

Mr. Anderson: Yes, and the description winds up by stating that it leaves the beach of the Pacific Ocean ascending the side of the
2751 Arroyo Sequit and following a westerly course along the line of the mean high tide line of the Pacific Ocean and into Ventura county and so on. It is not necessary to read anything further so far as this complaint is concerned. The next specific matter in this record which we wish to offer are the findings. The findings show that the cause came on for trial on the 6th day of October, 1908, before the court in department 7, the Hon. Frank F. Oster, judge presiding, the plaintiffs appearing by their at-

2752 torneys, J. D. Fredericks, Hartley Shaw, Haas, Goodrich & Dunnigan and the defendants by O'Melveny, Stevens & Millikin, Hunsaker & Britt and Fleming. Then there is a finding that there is now and was at the time of the commencement of the action a certain public road or highway in the county of Los Angeles, state of California, extending from the city of Santa Monica in a northwesterly direction along
2753 the shore of the Pacific Ocean to the Ventura county line and into said Ventura county and that the location and route of said road is more particularly described. Then there is a description which is identical with that in the complaint. Of course I state that subject to any correction, Mr. Burnell.

Mr. Burnell: Yes.

Mr. Anderson: Then the findings were signed on the 2nd day of May, 1910, by Frank
2754 S. Oster, judge of the Superior Court, and there is the filing mark May 2nd, 1910, C. J. Keyes, clerk, by Robertson, deputy. I next desire to offer the decree, based on the findings, under the stipulation already made, which recites that this cause came on regularly for trial on the 6th day of October, 1908, before the court in Department 7 thereof, the Hon. Frank F. Oster, judge, presiding, and so forth, the same recitation as in the findings. Then it states that it is hereby ordered, adjudged and decreed that there

2755 is now a public highway in the county of Los Angeles extending from the city of Santa Monica in said county in a generally northwesterly direct and near and parallel to the line of mean high tide of the Pacific ocean through the Rancho Malibu Sequis and into the county of Ventura. And then follows the same description as in the other document. And then follows a decree that certain obstructions should be removed, and then there is this following
2756 provision: It is further ordered, adjudged and decreed, that the defendants and all persons claiming under them be and they are hereby enjoined and restrained from asserting or claiming any right, title and interest to the road adverse to the people of the state of California, and stating that the road is a public highway. The plaintiff in that case being the People of the State of California.

2757 The Court: Of course it is not contended that that is adjudication as to the road.

Mr. Anderson: Oh, no, very much the contrary, but that is the injunction that was in force from the time of the decree until its reversal. Then it states that it was done in open court the 2nd day of May, 1910, by Frank F. Oster, judge of the Superior Court, and bears the file mark. That is the date, as I take it, from which time the injunction which I have read was in force.

2758 Mr. Burnell: Unless there was a preliminary injunction.

Mr. Anderson: There was not, and I will explain to you that we expect to show that prior to that, and I presume that that was the reason there was no preliminary injunction, the injunction of the federal court was in operation. I wish to offer the order in re the motion for new trial, on the minutes of the clerk of the court, Saturday, November 11th, 1908, which states
2759 that the motion was heretofore made, argued and submitted and it is hereby granted as to that portion of the road or highway in question, extending from Lachusa Canyon to the west end of the Malibu Ranch and denied as to the remainder of said road from the east of said ranch to said Lachusa Canyon. Now, I thought I would find the decision of Judge Parker, but I believe we can stipulate subject to your ob-
2760 jection that the portion of the case relating to the road from Lechusa Canyon to the west end of the ranch concerning which the new trial was granted, was subsequently tried before Judge Pat R. Parker, of Mono county, and that he decided that case in favor of the defendant, and the date can be furnished.

Mr. Burnell: That is correct as I understand it.

Mr. Anderson: We further offer the fact that on the appeal from the order denying the

motion for new trial, an appeal being taken to the Supreme Court of this state, that on April 7, 1917, the court rendered an order reversing the order denying the new trial and that was filed April 7th, 1917.

Mr. Burnell: Yes.

Mr. Anderson: Now, case No. 1379 of the District Court of the United States for the Southern District of the State of California, Southern Division, entitled, the United States of America versus M. K. Rindge as executrix of the estate of Frederick H. Rindge, deceased, *et al.*, and so forth, we will offer, and we will furnish later, copies, and stipulate that it may be deemed read, a bill of complaint which was filed December 3d, 1907, subject to the same objection.

Mr. Burnell: Yes, the same objection that it is not proper surrebuttal, incompetent, irrelevant, immaterial and not *res adjudicata.*

The Court: That is the Judge Bean decision?

Mr. Anderson: That is the Judge Bean case. We will further offer an order to show cause and a restraining order of December the 4th, 1907, and furnish a copy later and deem that it may be read and I will also state to Mr. Burnell that the order to show cause in that case was never heard. In other words, the temporary restraining order was continued from time to time until final decision was made and

2764 no injunction *pendente lite* other than the temporary restraining order was ever issued and the injunction was merged with the trial of the case and the restraining order remained in force from December, 1907, until the decision of the court October 27, 1913, and there was a decree of dismissal. The opinion is already in evidence in that little booklet.

The Court: It is not in evidence. The book was marked for identification only.

2765

Mr. Anderson: Oh, no, it was offered in connection with the letter.

The Court: I remember the offer and I remember the ruling of the court. There are matters in this book which are wholly irrelevant. Now I want it understood, because that is the record, and you will find it in the record, that the book is not in evidence.

Mr. Anderson: I will, of course, yield to

2766 Your Honor's statement, but Your Honor will remember, when we read the letter, which accompanied it into evidence, you said that it was not necessary to read that to the jury—

The Court: I recall the circumstances very clearly and I remember the ruling and you will find it in the transcript.

Mr. Anderson: If that is the case, then at this time I renew my offer, as that is part of the document which was transmitted to the board of supervisors and which has been read

2767 in evidence, and ask that it be received as a part of that communication.

The Court: That ruling is already in the record on that.

Mr. Anderson: Yes, but I am now renewing the offer under the misapprehension of the ruling.

The Court: There is no misapprehension at all about the ruling.

Mr. Anderson: Well, there is on my part.

2768

The Court. Then it will stand as it is.

Mr. Anderson: If it is offered for identification I now offer it as a part of the communication which did go into evidence.

Mr. Burnell: The same objection.

The Court: The same ruling.

Mr. Anderson: That is, it is now ruled out.

The Court: It has never been ruled in.

Mr. Anderson: Exactly; but it was in for

2769 identification, and I am now offering it in connection with the letter which was read in evidence, in which it was transmitted to the board of supervisors.

The Court: You are offering this document which is marked Defendant's Exhibit 3 for identification only, in evidence?

Mr. Anderson: Yes, as a part of a communication which has been admitted in evidence and in which it was transmitted to the board of supervisors.

2770 Mr. Burnell: The same objection.

The Court: Sustained.

Mr. Anderson: Now, at this time that is all.

The Court: I want it understood, gentlemen, in reference to this exhibit for identification, that the decree which has been referred to, the decision of the Supreme Court of this state and the decision of the United States District Court, the so-called Judge Bean decision is not in evidence in this case.

2771 Mr. Anderson: Yes. That is all we have at this time. We will now turn Mr. Comley over to you. If the court please, I find here that the remittitur in case No. 59557, the case of People against Rindge, was filed in the Superior Court of the county of Los Angeles, on May 11th, 1917. I wish to add that to my offer. I also find the judgment roll in the matter of Judge Parker's decision. I think I have it here.

2772 The Court: Do you offer a certified copy of opinion with the remittitur?

Mr. Anderson: Well, there is no certified copy of the opinion accompanying that, but I think it will be stipulated that the copy I have is a copy.

Mr. Burnell: Oh, yes, if you know it to be such.

Mr. Anderson: Yes, we know it to be such.

Mr. Burnell: Very well, we will stipulate.

2773 The opinion in question is reported in full in the case of People v. Rindge, 174 Cal. 743, which is hereby referred to and made a part of this bill of exceptions.

Mr. Anderson: Then I wish to offer the findings of fact and conclusions of law, without having them read, made by Judge Pat R. Parker, and dated the 28th day of June, 1917, and filed in the court on July 2, 1917; also the decree of Judge Parker, decree in the same case,
2774 which was dated the 28th day of June, 1917, signed Pat R. Parker, judge, and filed on July 2nd, 1917, the effect of the decree being that there was no public road—that is, holding in favor of the defendants as to that portion of the road from Lachusa Canyon west to the Ventura county line.

Mr. Burnell: Objected to on the same ground.

2775 The Court: Overruled.

Mr. Anderson: It will not be necessary to copy it into the record.

Mr. Burnell: No, it will be stipulated that Mr. Anderson's statement is correct, subject to any corrections we may later find necessary.

MRS. C. M. DECKER,

recalled on behalf of the plaintiff and testified as follows:

I am familiar with the territory where the old road that has been referred to in this case

2776 as the beach road is that I used to travel through the Rindge Ranch, that passes Zuma Canyon. On or about June 10th the principal old road went through the premises, that is, the ranch road; but the road following the railroad right of way to the mouth of the canyon. Near the mouth of the canyon the tide water comes in and often makes this almost impassable. I have seen the railroad bridge, a large
2777 part of it, submerged by the water from the tides,—not necessarily storm water coming down in the winter, but in the summer time—the water from the ocean; all except a small portion on the east side. When I speak of the road going through the ranch premises to the canyon, I am talking about the old road that I used to take back and forth through the ranch to our premises; we have been along that way. We had permission to travel that way for a
2778 while, and it passes through the premises at Zuma. There is no other road we could use going the beach way and going through the slough I just referred to. Going the beach way you avoid going through the premises; I mean right on the beach.

Q. Now, at high tide, can you use that beach road?

Mr. Anderson: Objected to as immaterial whether she could or not.

The Court: Overruled.

2779 Mr. Anderson: Also having been gone into fully on her other examination.

The Court: Do not prolong the examination, Mr. Burnell. Overruled. Read the question.

(Exception No. 54.)

A. Well, if the water is in this slough, you cannot.

Mr. Anderson: I move that that be stricken out as not responsive.

2780 A. Well, it is hard to explain. The road that goes down the beach would have to pass through this slough to get on the beach.

The Court: Now, the question is whether you have used that road in high tide—whether it is passable at high tide. A. Not if this was filled in with the tide water. This tide comes in and fills all this basin, and it throws up a sand bar and then the water does not escape immediately. Sometimes that condition lasts a

2781 week or two, and sometimes longer; that is, there is a sort of pond forms. I have been over the beach when I saw the water forming a pond. It came in the bed of the wagon; it would be 3 feet or more, it seems to me so. We had an ordinary farm wagon, a spring wagon.

Cross-Examination

By Mr. Anderson:

That occurs in the summer time, in July, and in the Malibu Creek the same way.

Q. How many times have you had that occur

2782 to you in the summer time? A. Well, I have passed through it twice that way, perhaps in that many years.

We have been traveling the road for several years, at various times, and twice we have passed through it in that condition. We had permission to travel over the road through the ranch property. That is the road that goes in between the stable and the houses and then out over the mesa. We got that permission from
2783 old Frank Ruiz; that is one of the employees on the ranch; Frank would let us go through. That occurred several times, perhaps ten times. That was not as often as we traveled the other road. I don't know how many times in the course of that seven or eight years that we were there, that we traveled by the beach road as distinguished from the road through the mountains. There was just about as many times we
2784 crossed the mesa as we had to go the beach from Trancas to Zuma. In that seven or eight years our full number of trips was approximately twenty times.

Mr. Anderson: In connection with the offer which I made this morning I have here a copy of the bill of complaint in the federal case which has been referred to No. 1379, and I wish to offer that in evidence and it may be stipulated that the reading is waived.

2785 (This decree is one of the exhibits to be certified up.)

Mr. Anderson: The only purpose of offering this is to show the property covered by the restraining order and that can be referred to later for the purpose of argument.

Mr. Anderson: Now, I wish to offer the restraining order and I wish to read it to the court.

2786 The Court: Same ruling. There is no description in it, is there?

Mr. Anderson: No. (Reading.) Title of court and cause: Upon reading the bill of complaint filed herein and the affidavits of Marion Decker, Charles M. Decker, Wm. D. Newell, Joseph A. Anker, James R. Shaw, E. H. Kincaid, Frederick R. Miner, T. K. Moffett, Perry Cottle, Charles O. Pollard and Oscar Lawler, certified copies of which said bill of complaint

2787 and affidavits are directed to be served herein and on motion of Oscar Lawler, United States Attorney for the Southern District of California, solicitor for the complainants.

"It is hereby ordered that the defendants, and each of them, show cause, if any they have, before the judge of the above entitled court at the court room thereof in the city of Los Angeles, county of Los Angeles, state and district aforesaid, on Monday, the 16th day of December, 1907, at the hour of ten thirty o'clock a. m.

of said day or as soon thereafter as counsel can be heard, why an injunction should not issue during the pendency of the above entitled suit or until the further order of the court pursuant to the prayer of said bill of complaint and it appearing from said bill of complaint and affidavits, that there is danger of irreparable injury to said complainants and their property, from delay in granting an injunction as in said bill of complaint prayed for, you, the said May K. Rindge, as executrix of the last will and testament of Frederick H. Rindge, deceased, May K. Rindge, N. D. Darlington, John Doe and Richard Roe, your clerks, agents, attorneys, servants and employes are strictly commanded and enjoined under the pains and penalties which may fall upon you and each of you in case of disobedience, that you forthwith and until the further order, judgment and decree of this court, desist and refrain from obstructing, impeding or interfering with ingress to or egress from any of the public lands of the United States described in the bill of complaint herein. Otherwise than by the maintenance of gates across the respective roads described in said bill which can be opened by hand without the aid of keys or other implements, it being the purpose and intent of this order without passing upon or determining the rights of either of the parties to the above entitled suit, that such ingress or

egress shall not be impeded or interferred with otherwise than by gates which can be opened and closed as aforesaid.

Dated December 4, 1907.

OLIN WELLBORN, *Judge.*"

Now that is the restraining order which, as we have stipulated, remained in force and was merged in the decision of the court, that decision resulting in the dismissal of the bill of complaint heretofore stipulated with regard to.

(The "roads" referred to in said restraining order were roads upon, across or through the Malibu Ranch of defendant, May K. Rindge and Rindge Company, and "the public lands of the United States described in the bill of complaint" were government lands to the north and west of the Malibu Ranch and in proximity thereto and which could be reached by the roads through or across said ranch.)

Mr. Burnell: I presume that you mean it was merged in the trial. You said in the decision.

Mr. Anderson: Well, it was in effect, because the decision covered it.

2794 R. F. MCCLELLAN,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

At the present time I am one of the board of supervisors of this county and have been a member of the board about two years. I took office the first Monday in January, 1917. I was
2795 present at the meeting of the board of supervisors held on the 18th day of October, 1917, and took part in that deliberation of the meeting of the board that day. I remember a subject coming up before the board on that occasion with relation to the proposed road through the Malibu Ranch.

Mr. Anderson: I think I can stipulate with counsel that at the first meeting Mrs. Rindge and myself were present and participated; at
2796 the second meeting Mrs. Rindge, Mr. Newby, Mr. Guernsey and James Anderson were present.

Mr. Burnell: I think that that is correct.

Mr. Anderson: Mr. Scotton was there but he took no part in the discussion.

Q. Can you state generally what the subject of discussion was at that meeting?

Mr. Anderson: We object to that so far as the main case is concerned, it is incompetent, irrelevant, immaterial and has no bearing upon

2797 the issues in that case. We don't object to it as to the Alisos Canyon case, although it is a little remote as to that.

The Court: The objection will be overruled as to the Alisos canyon road and the testimony will be considered by you, gentlemen of the jury, if at all, with relation to the Los Alisos canyon road only.

A. I can not repeat all that was said; there was general discussion pro and con as to the
2798 feasibility of the road.

Mr. Anderson: Don't you think we can cover it by a stipulation that Mrs. Rindge sought to induce the board of supervisors to abandon the road through the ranch and there was a general discussion on that subject?

Mr. Burnell: I think that that was the effect of the meeting but there has been some testimony that we want to go into.

Mr. Anderson: Very well.
2799

As to the tone of that meeting, as to being orderly or disorderly, I think at times it was rather disorderly. It all came from questions asked different people by Mrs. Rindge's attorneys; there were a large number of people present. The proceedings of the board were orderly. The board listened to all those who desired to address it, both those who represented Mrs. Rindge and those who took the opposite view. All persons desiring to address the board had a

2800 full opportunity accorded them to address the board.

Mr. Anderson: This is entirely confined to the first meeting.

Mr. Burnell: Yes, the first meeting in October.

(Continuing.) I was also present at a meeting the 27th of May, 1918. That was the meeting about which Mr. Anderson and yourself have stipulated that Mrs. Rindge, James An-
2801 derson and Mr. Guernsey were present. I do not remember whether or not at that time there was any public discussion at that meeting with regard to the road through the Malibu. The meetings were orderly, but the discussion got rather warm at times. The board of supervisors listened to all those who desired to address it, no matter which side they represented, and listened to Mrs. Rindge and to her attorneys,
2802 Messrs. Newby and Anderson, and Mr. Guernsey.

Q. Do you remember whether or not the question of putting a road through from Triunfo, through the Santa Monica mountains, was discussed? A. The question came up as to the feasibility of it.

That subject was discussed very little. It was discussed as to the feasibility, from the standpoint of those who advocated such a road and from the standpoint of those opposed to it,

2803 but not to a great extent. The discussion came from the Rindge side and always has with regard to that Triunfo road. I don't know that the map that we had refers to this (Exhibit 6). It was merely a sketch from a newspaper. I know about the points through which the road ran. The old Topanga road, from the newspaper clipping is the only thing I have to go by. That is the only map we ever had or saw. There
2804 was no map or set of plans presented to the board showing the location of such a road, only this newspaper clipping, I presume. I have had conversation with Mrs. Rindge with regard to roads on the Malibu Ranch.

Q. Can you give us the date of any such conversation?

Mr. Anderson: We object to it as immaterial.

The Court: What is the purpose of it?

2805 Mr. Burnell: Admission of necessity, Your Honor.

Mr. Anderson: You mean to claim we have admitted the necessity?

Mr. Vallee: Admission as to whether or not the road was located compatible with the greatest public good and the least private injury.

The Court: Overruled.

(Exception No. 55.)

A. I talked with Mrs. Rindge; I couldn't give you the date, but I talked with Mrs. Rindge in

2806 the Hall of Records. I do not remember when it was, exactly. It was before we had started the condemnation proceedings, and I tried at that time to—

Mr. Anderson: If the court please, I object, then, on the ground that Mr. McClellan was not a supervisor at the time, because these condemnation proceedings were started in 1916.

The Court: I don't think it makes any difference.

2807 A. I am speaking of the one started when I was supervisor.

The Court: Just a moment. One at a time.

Mr. Anderson: Then we object to this conversation so far as the main case is concerned, on the ground that it would be incompetent, irrelevant and immaterial, matters occurring after the board had passed its resolution and commenced the condemnation.

2808 The Court: Overruled. You have propounded the question directly, and let us have a direct answer from the witness to the question.

(Exception No. 56.)

Mr. Burnell: Read the question.

(Last question read): "Do you remember the date?" A. I do not remember the date.

I know that it was after the 25th of August, 1917. I figure that date simply by securing a permit to go up over the Malibu to investigate

2809 the possibilities of a road. I don't think that anyone listened to the conversation at that time when Mrs. Rindge and I were talking of it. It was in the Hall of Records, right on the main floor in the supervisors' room: to the best of my recollection it was in 1917, and some time after the 25th of August. I asked Mrs. Rindge if we could not get together in a business way and select a right of way for a road up through the Malibu; that that was the only feasible way for
2810 one and that if she was willing to do that that the county would furnish an engineer and she could furnish one and we would have them go up there and select a right of way that was best suited and would do the least damage to the ranch; she said no, she would not do it. I said, "Why can't we do this, because you are maintaining a ranch up there now and there is a road tax of forty cents charged against your land
2811 and your valuation there for which you don't receive any benefits, and if the county has a road there this money will be available to help keep up the road, and it seems to me it would be an advantage to you instead of a disadvantage." She said no, she would not have those people crossing her ranch. That about ended the conversation. I don't think she mentioned any particular people. I think that is the last conversation that Mrs. Rindge and I had. I am not quite sure. That was not the first conversation I had

2812 with her. I talked with Mrs. Rindge when I went out for this permit to go on the ranch; that, I think, was about the 23d day of August, 1917, because I was up there the 24th and 25th. Mr. Scotton, I believe, was in the office. This conversation took place in Mrs. Rindge's office here in this city. We talked about roads, through the country there and the possibility of roads up over the Triunfo and cross out by
2813 the Crags Club in through that country. In fact, we looked over the maps. Mrs. Rindge's attention was to the map. She thought there could be a road up over the Triunfo and out that way, a road starting up at the edge of Topango Canyon and in there, going across; that is, starting one end at Topanga Canyon and the other at Triunfo. We discussed my trip going up there and the purpose of it was to look over some of that country up at the head
2814 of Corral Canyon and the Triunfo country. Mrs. Rindge said she thought there could be a road put through there that would be suitable to accommodate the settlers in that country, constructed from Triunfo to Topanga Canyon. I didn't reply anything in particular. I could not, because I didn't know. I was on my way to find out. Just after this conversation I went up the coast to Corral Canyon and then I went across the divide that comes in at Corral Canyon and came out over to the Crags Country Club.

2815 Mr. Jones, one of the engineers of the road department, was with me. That is not the same Jones that is now acting as county surveyor. He is a bridge engineer. One of the settlers up in the head of the canyon went over the divide with us. I don't recall his name. I say we went up Corral Canyon from the Malibu Ranch. We went over a trail from the summit down to the Malibu Creek, went over the divide at the head
2816 of Corral Canyon and went over a pack trail there that packs down in about the Crags Club. From there we took the road from the Crags Country Club home. It is the main road that comes out on to the highway. That is the road that runs from the state highway up through this canyon to the Crags Country Club. It is the main road that everybody goes on to the club, the Crags Country Club. The road branches off and goes toward Malibu Creek. I have been
2817 over the so-called Decker road that leaves the main state highway at Triunfo and goes over the Malloy hill and into the territory sometimes called the Decker settlement. I was over there in July of this year. The condition of the road as I saw it in July of this year into the Decker place is a rough, hilly road. We left the state highway at Russell ranch and went down through the ranch for about three miles and then we turned off the main road. It was a very good road from that point and from there

2818 we started to climb through the gulches up to what is called Malloy hill, which is a rocky, rough, steep hill, although a good strong team can get up Malloy hill. But it is impracticable as it is today. We got up with the machine that we had and then we ran off the track and had to get horses to pull us out. Then from there on down to the Decker's there is a couple of miles that could be—it could all be made a very good road beginning from this water shed
2819 over that way, but coming back you find a steeper grade. The section I mean can be made a good road is from the Malloy hill down through to—clear down to the beach. Right down through the canyon to the coast. From Malloy hill, by spending money enough, it could be made a fair road through that country.

By the Court:

We went up this year with an automobile and
2820 tried to get through but we failed. We got off the road and could not make it. We negotiated the grade on the Malloy hill with a powerful machine. We had a Hup., that is in the road department, which is one of the strongest and best in the department. There was three passengers in the car, two and the driver. They did not remain in the car during the entire time. The part of the road that the machine had to be pulled out of with a horse was after we ran off the road, we had to get teams and haul the

2821 car out beyond the Malloy hill. We happened to get off the road because it was a narrow road, or something, anyway we got off, slid off in the fill, at a narrow place. I have been from the so-called Decker settlement down to the beach by way of Malibu Ranch. I went down the canyon, the one that the road is surveyed down, Los Alisos, I believe; I don't remember the names of all those canyons. I have been down all the way to the ocean; it was in July
2822 this year.

Cross-Examination

By Mr. Anderson:

I have testified as to two conversations with Mrs. Rindge, one in the main room of the supervisors and the other at her office. I think she was in my office at one time. It is not a fact that at that time I showed Mrs. Rindge a certain map, or a map of a road through the Triunfo, which I said I thought would satisfy all
2823 the settlers and would be the best route to take; nothing of the kind took place. That Triunfo road might have been discussed, but I never said there could be a road put through there. I said I would go and investigate it which I did. I investigated it just as I tried to tell you; over Corral canyon. Up Corral canyon to Crags Country Club and from there out on the road commonly used by the Crags Country Club, we spent fourteen hundred dollars surveying in there and trying to find a way.

2824 Q. Don't you know that this investigation which you made consisted of going up a trail through Corral canyon and over the canyon to the Crags Country Club and going from the Crags Country Club over the road customarily used by people going to and from the Crags Country Club to Los Angeles? A. It was a part of it.

We sent a crew of surveyors, attempting to find a road. Mr. Jones, with his crew, spent
2825 $1400 trying to find a way through there. We got a survey from them. I don't know as a matter of fact that the survey I have in mind is from Charley Decker's house to Triunfo post-office and not over the route we are talking about; you have got it wrong. I didn't have two surveys made in that region. I don't know what the board of supervisors may have done before I became a member of the board.

2826 Q. I call your attention to road book No. 18, of the supervisors' office, supervisors' records, and to page 214. On February 1st, 1917, you were a member of the board of supervisors? A. Yes, sir.

Q. I call your attention to the recitation on page 24. "The board met pursuant to adjournment. Present Supervisors J. J. Hamilton, chairman, presiding; R. H. Norton, F. E. Woodley, R. F. McClellan and J. S. Dodge." Is that

2827 according to your recollection? A. It should be correct.

Q. Then on the same page, I call your attention to this resolution: "In re road from Russell Valley to Los Alisos Canyon, order authorizing survey. On motion of Supervisor Woodley, duly seconded and carried; and in accordance with the recommendations by the county counsel, and the county surveyor, it is ordered
2828 that the county surveyor be and he is hereby authorized and requested to make surveys and notes for the preparation of a right of way for a road extending from the Meloy ranch house in Russell Valley to the house of Charles Decker in Los Alisos Canyon, on road district No. 5." Do you recall that?

Q. By Mr. Anderson: You were present and heard that resolution? A. You are talking about one survey and I am talking about
2829 another.

I was present and heard that resolution and participated in it.

Q. Do you recall any other survey being authorized by the board of supervisors than the one I have read to you? A. It was before that.

I don't remember the date. I said that survey was authorized by resolution of the board. The minutes of the board would show. The surveyor produced maps and profiles and we have them. I can get them from the surveyor's

2830 office. I can get the minutes of the grades out of my office, but not the maps. I made another trip later. I went through from Russell ranch to Decker's. That did not go over any part of the road from Topanga road to the post-office. The trip that I have been testifying to about Corral Canyon, and Crags Country club, and from Crags Country Club to Los Angeles was not the only trip that I personally made. I made several with regard to that road. I went
2831 through to the Decker place.

Q. You have just testified to that and stated that it had nothing to do with the road from the Topanga Canyon to the Triunfo post-office. Did it? A. Not the Decker road, but the other did.

With regard to this proposed road I made just one and the one I have described. It is a fact that prior to the meeting of the board of
2832 supervisors at which Mrs. Rindge and you were present on October 18, 1917, a very large petition was filed with the board of supervisors requesting the abandonment of the proceedings for the condemnation of the road through the Malibu Ranch. It is not a fact that I stated at that meeting or in connection with that meeting, that I had not read and would pay no attention to that petition because I thought it was a petition that should not have been presented for the reason that the other people had not

2833 been given an opportunity to present any petition. My statement was the fact that I did not believe the board would consider attempting to build a road across the heads of those gulches at a cost which would be prohibitive, when a road up the coast, the natural watershed, could be built for a quarter of the money. I did not understand that the road up the coast went for three or four miles back through the canyons and across the very gulches I am
2834 speaking of. I have reference to the head of Malibu Creek and all those canyons up there. They went over the heads of those gulches and ravines, and you could not get in there any other way.

Q. Then, as I understand it, you did not make the statement that you had not read and would not consider that petition because you thought the people on the other side of the can-
2835 yon had not had an opportunity to present the petition themselves; you didn't make that statement? A. No, sir, not in those words, at no time. The words I did state were just what I have repeated. I made no statement at all that I had or would not consider that petition. I don't remember that that petition was ever presented to the board in open meeting and considered by it. I know, as a matter of fact, it was filed, and I know, as a matter of fact, that I knew of its filing when it was filed.

949

2836 MINNEY O. SMALLEY,

a witness called in behalf of the plaintiff, being first duly sworn, testified:

That she was the stenographic reporter of the proceedings of the board of supervisors of Los Angeles county; that she was such on the 18th day of October, 1917; that as such she took down all that was said at the meeting of the board on that date.

2837 Mr. Anderson: We will stipulate that the witness will so testify and have no objection to her reading what took place. We have not the slightest objection to it.

Whereupon the following was read into the record. A Mr. Dodge was acting chairman at that time. He said, "There were two special matters that were set down for ten o'clock. Mr. Faries, county counsel, is not here, and we would not want to take up the matter of the 2838 Gas Company franchise in his absence. The other matter was a question of the Malibu road. If no objections I guess we will take that up.

'Mr. W. H. Anderson: Gentlemen, I appear, as you know, on behalf of Mrs. Rindge and the Rindge Company, the owners of the ranch. It is with some degree of rather a feeling of embarrassment that I appear, in view of certain statements that have been made in the newspapers concerning this matter, which, if true,

2839 would seem it is almost unnecessary for us to appear here at all. I don't know that they are true, and I hardly believe they are true. They are practically to the effect that this board has already pledged this matter and that any matters stated here this morning has no particular effect on this one way or the other, in the matter of making up their minds on the merits of the proposition of this road. The Record, for instance, last night under the heading of "Malibu
2840 road assured," says, "The evidence to be offered by Mrs. May K. Rindge,"' I didn't take that down and I have not the—I didn't procure that.

Mr. Anderson: It simply appears that I read an article from The Record. A. Yes, you read an article from The Record.

Mr. Anderson: If I can find it we shall ask the privilege of introducing it. A. I evidently
2841 took down a part of it as I could, but I don't believe it is all there.

Mr. Anderson: I suggest that the witness read as far as she can what she has there. It may be fragmentary. A. 'Will not affect the matter, according to the opinion of Supervisor McClellan. "We intend to put the road through," said McClellan. "We are hearing Mrs. Rindge in the hope we will be able to adjust the difficulty without going into long and expensive suits."' That is all of that. 'I take it you

2842 people so far as Mr. McClellan is concerned, he has already made up his mind. We have not said what he might or might not'—

Mr. Anderson: I didn't get that.

A. Just a moment.

The Court: We will take a recess and you can look over your notes. A. I think that is the last one I have not with me.

The Court: We will take our recess now. Gentlemen of the jury, we will take a recess for
2843 a few minutes. Please remember the admonition.

(Recess.)

(After recess; stipulated jury present.)

The Court: Now you may proceed.

The Witness: 'So I take it from that, so far as Mr. McClellan is concerned, he has already made up his mind irrespective of what we might or might not say to you this morning. I can-
2844 not assume, however, that he spoke for the rest of you in that particular. Now as a matter of fact, Mr. McClellan some weeks ago, or some time ago, made a statement and on the strength of that statement and on the strength of the fact that it appears there would probably not be any hearing unless some steps were taken by us, we prepared and filed with you a very elaborate statement of this matter in the form of a protest and accompanied it by the protest of some twenty odd thousand residents of that

2845 particular road district against the building of this elaborate and expensive road at this time, in view of the general unsettled financial conditions of the country. I note that Mr. McClellan is quoted again, "I have not inquired closely into the petition but so far as"—and I didn't get the rest—I take it of course that even though Mr. McClellan may not have up to this time given that petition any serious consideration, in view of the fact we have been backed up by the
2846 signatures of twenty thousand of the people of this county, and his road district, that before he comes to any final and ultimate conclusion in this matter that he will give it the serious and particular consideration it is entitled to and I take it you gentlemen will do the same thing. Now if you have not read that long statement I am not going to attempt to go into the elaborate history of this matter, but it is well known
2847 to all of you, that this road business out there has been in litigation since 1907 and it is well known to you that commencing in 1907 and extending down to practically last year,—the early part of this year even,—that road, in so far as it was used by the public at all was used under an injunction issued first by the United States government, and an injunction issued next by the Superior Court of this state, and that therefore during all those years it was used against the wishes and protests of the Rindge people,

2848 and in protest of this injunction, and whoever went in there, under that state of affairs, went in knowing very well that there was litigation pending upon which would depend the use of this road as a public road. No effort, up to last year, was ever made to do anything in the way of condemning this road. Last year condemnation proceedings were commenced, or pending, and whether they are pending in proper shape or not is a matter I don't care to discuss. Now,
2849 during that period of ten years, during a large portion of it at least, after Judge Oster's decision in 1910 and up to 1916, and prior to this year, the road was decreed to be and until that decision was reversed a public road, but the board of supervisors nor any one connected with it up to 1916, and late in 1916, never made any effort to keep that road, or any part of it in repair; moreover, a great portion of it was ocean
2850 beach that did not amount to a road, and the result was that miles and miles of it washed out and became useless, and the Rindge people, feeling no obligation to keep it in repair, built themselves private roads at great expense, and fenced and locked them and the result was that because this road was not kept up, the Ventura county ranchers suffered the alleged privations it is claimed they are suffering now, and for months the controversy raged over that, in which this board officially took no part, and these settlers

2851 came in and broke through the gates and committed all kinds of depredations until we brought action to restrain them, which action they did not defend and an injunction was issued against them and is pending now. The only reason I mention these facts is this, that the condition, after that road went into disintegration and the conditions which compelled the Rindges to build this private road for their own use, and the
2852 conditions which rendered miles of that road practically useless and stood there for months and even years, without any one feeling the necessity of putting in a day or spending a dollar of county money, to keep it in repair, now the courts have finally, and in three different instances, the Federal Court by Judge Bean, the Supreme Court through Judge Hinshaw and the Superior Court through Judge Parker, have unanimously held that these roads, pending in-
2853 vestigation, are public roads, and that is the condition that there is today. Rather anticipating the ultimate decision, the condemnation proceedings were instituted last year and are still pending. Now, as a matter of fact, and I think you gentlemen ought to consider this seriously, as a matter of fact the road that has been so much talked about running from Las Flores Canyon on the east through that 20 odd miles of Rindge property along the coast, to the Ventura county line, and the road that is in a sense covered

2854 by the present condemnation proceedings, that that road cannot afford any relief to a single solitary person west of the Ventura county line, because there are no public ways of any kind to the north of it, and it ends at the Ventura county line upon Rindge property, which Rindge property extends two or three miles into Ventura county, and there is no public road across that and you have no guarantee even, though the necessities are the same, you have nothing 2855 to guarantee that anything will be done in the other county. You have no guarantee of any public road there, so as far as any necessity for the road through the ranch, the coast road, this absolutely would be an utter and futile waste of money.

'Now, moreover, to build that road clear through to the Ventura county line would mean to carry it for five or six miles beyond the possibility of any user in the shape of Los Angeles 2856 county settlers, for practically the last man in Los Angeles county who, even if cross roads ultimately are constructed as the situation now exists, are the people who would use Encinal Canyon, which is a mile and a half this side of Lachusa, and five or six miles this side of the western end of the road.

'Therefore, the western end of the ranch would serve no one, except the possibility ultimately of building the road through to Ventura

2857 county to serve Ventura county citizens. Does it appear to you, as men of business and experience, who are entrusted with the funds of this great county, that in these serious times when money is scarce, you should build this road which, in the first instance, without additional expense, would afford relief to nobody—which in the next instance would afford relief so far as Los Angeles is concerned to a few canyon settlers to the north of the ledge, and, finally
2858 as to the last five or six miles of it, would afford no relief whatever to anybody in Los Angeles county certainly, and only in the ultimate future to anybody in Ventura county, provided the Ventura county authorities should take such action?

'Now, that is the road situation up there. Now, as far as the settlers are concerned, during all these times, as I tell you, when these
2859 roads were washed out, and when they had no right to use these other roads and were stopped by injunction from using them during the last two years at least, they have been able to get their supplies in and to get their crops out. The fact of the matter is that this is a hue and cry, which it seems to me is more in the nature of a thing stirred up by the Santa Monica and Venice Chambers of Commerce for the sake of a possible small amount of trade they may get, than by any real necessity that exists anywhere.

2860 I imagine, too, there are interests in this county that would like to see the county spend an immense amount of money on the consideration of the road for automobile scenic purposes; but I don't think this is the time to go into that kind of an expense at the expense of the taxpayers, particularly when taxes are high, getting higher, when money is scarce and getting scarcer, and when no expenditure not absolutely necessary should be made by anybody.

2861 'Now, it might be instructive for you gentlemen to know that in the government case, which was a very peculiar case, that the government, and the Rindge Company spent thousands and tens of thousands of dollars having surveys made and estimates made up along that ranch to determine the very identical question which seems to have been more or less influencing Mr. McClellan in this matter, namely, whether or

2862 not it was necessary for the courts to hold that their ways down the canyon through the ranch, that is, ways of necessity, because there were no other reasonable ways for these settlers to get out. That question, after the most elaborate consideration and expense, was determined adversely to the government and in favor of the Rindge people. Or, in other words, there was no ways of necessity.'

That word is 'ways' I think.

2863 'There were no ways of necessity, because there were other means for these settlers getting in and out. Now, since that time conditions have been very materially improved in that regard. Take the Decker people. They have roads and principally use the roads over the state highway. Others have ways out down Las Flores Canyon, and others at very little expense, according to what it would cost this county to
2864 condemn a road through the ranch, and 12 or 13 roads across the ranch to get the roads they need, and it seems that matter ought to be thoroughly considered before you take up the question of condemning 20 odd miles through the ranch with the possible necessity of condemning 12 or 13 roads across it.

'Now, what I have said so far has related mostly to the business end of it. But there is another end of it, notwithstanding there is a
2865 kind of public prejudice against it, and that is the question in which the interests of the Rindge Ranch should itself be considered and the Rindge people.

'The Rindge Company alone pays taxes in this city and county to the extent of something like $40,000, and is an institution that is engaged in enterprises that are of great benefit and should be of great benefit to the people of the county. For instance, they have this enormous ranch there which they are devoting, as

2866 far as they are able to, under the difficult circumstances that this annoying litigation has put them in—they are endeavoring to raise foodstuffs, cattle, hogs, wheat, grain, foodstuffs, that at this crisis, if at no other, are and will be of the greatest possible benefit to this country in furnishing food supplies which are so much needed and for which an appeal is daily going out from every government head in the country.

'Now the result of traffic over that ranch,
2867 even the result under the tentative injunction, was that innumerable forest fires were caused. Trespassers went up and down that canyon because they could not be kept out. Innumerable cattle were poisoned, hogs were poisoned, and traps have recently been scattered through the ranch and the result has been the loss not only of thousands of dollars to the Rindge people by people being in there, but it has resulted in
2868 destroying thousands of dollars of necessary foodstuffs, which it is a crime to destroy at this crisis, irrespective of the loss to the Rindge people.

'Now, those matters should be considered, and again you can readily see, any one of you, that if you were the owner of a large property like that, situated as that is, that nothing would compensate you for cutting it up into twelve or fifteen small holdings, by putting public roads down those canyons and across that ranch, and

2869 nothing in the way of a road will answer the so-called or supposed needs up there but that very identical thing. That is, as I said at the outset, you may build any road you please from Las Flores across to the Ventura line and it affords ingress and egress to nobody except the ranch owners themselves, because it begins and ends entirely on the private property of the Rindges.

'Now, gentlemen, this is not a matter that
2870 should be hastily gone into. It is going to cost a great many thousands of dollars to put this road, or these roads through here and you should certainly weigh not only the question of the cost against the so-called necessity or against the good benefit it will do, but you should weigh it as against what it would cost to give these settlers in Los Angeles county, the men whom you are to consider, and who are your constituents—what it would cost to give them adequate
2871 ways out onto the highway on the other side of the mountain. Most of them have it. Most of them who haven't it for wheeled vehicles, all have it by way of trails; and I think it is out of the question but what every one of them could be given adequate outlet at a much smaller expense than the construction of these roads, and certainly without doing anybody any damage whatever, and that is not the case in this instance.

2872 'I would like at this time on the suggestion of Mr. Scotten—we would really like at this time in order that we know somewhat where we are at, just what the board has definitely considered. I don't mean determined on, because I don't believe that Mr. McClellan was reporter—that the report of Mr. McClellan's statement—I think this should be taken more as a newspaper interpretation because I don't believe any of
2873 you gentlemen have definitely made up your minds irrespective of anything that may be brought before you; but what has been considered in the way of any road or roads up there? We have no definite information on the matter except that possibly something was going to be done.

'Mr. McClellan: Mr. Chairman, as long as this matter has come up, I am very glad to state where I stand in the matter. We have gone
2874 this far in the matter—been attempting to get together with the Rindge people and agree upon a road and right of way for a road.

'Mr. Anderson: Mr. McClellan, may I interrupt you right there. I would say this, that one of the principal reasons why Mrs. Rindge has not entertained that proposition is simply the fact that nothing in the way of an arrangement up there for roads as we conceive it would be of any benefit without cutting up the ranch by cross roads, and that is a matter of quite

2875 serious import to her that she does not feel that there is any compensation which would adequately pay for it.

'Mr. McClellan: And if we cannot do that we are disposed to condemn a road through there if we can do it.

'Mr. Anderson: Do I understand one or more?

'Mr. McClellan: Now, I want to go back to the meeting at Santa Monica. You and Mr.
2876 Scotten were there. Others were there representing the Rindge people. The Santa Monica people, the Chamber of Commerce and also settlers, asked me at that meeting if it was necessary for them to get out and circulate a petition for this road. You heard me say to them, No, not to spend their time and money on petitions, which they had not, because I told them it was not necessary, and on top of that you people
2877 scour the county and get names on the petition against the road. So, so far as I am concerned, that petition presented here by you don't have one particle of weight in the matter, because the other people were cut off from presenting their petition.

'Mr. Anderson: That was no fault of ours. I should think, gentlemen, that the right of petition is open to every citizen of the United States, and it is the right and duty of a public officer to consider any petition that is filed with him.'

'Mr. McClellan: Under ordinary circumstances it would be.

'Mr. Dodge: Anybody else would like to be heard in this matter?

'G. H. Starbuck: I would like to speak something about that petition that was filed. I think we can show, if given a little time, by the necessary affidavits, that that petition was misrepresented; at least the people on 45th St. have told me that that was to greatly increase their taxes and that they signed under a misapprehension. Two ladies made the canvas, I think, on 45th St., and I think if it is necessary we can show you that it was not open and above board, and if the board is disposed to give a little time on that I will try to show that to you. There people were informed, I am told, that there would be a special district and not come out of the general fund and, as a matter of fact, the neighbors got together there on 45th St. and talked the matter over and I think some of them would be glad to withdraw their names on that petition.

'Mr. Dodge: Have you anything to say as to the merits of building the road through the Rindge ranch?

'Mr. Starbuck: Well, of course I am perhaps prejudiced. I own land at both ends of that road if it was put through there.

2881 'Mr. Dodge: You heard what Mr. Anderson said about the road not reaching the settlers.

'Mr. Starbuck: That is true. They would not, except at one place where the survey strikes private property. I think it would in the upper end somewhere north of Lachusa canyon. I think it would strike private property there.

'Mr. Anderson: Absolutely not.

'Mr. Starbuck: I may be misinformed as to
2882 that, but I looked at the original tract and surveys and I thought that was the fact. However, I think roads would have to be constructed across there. In fact, I have a petition here for that very thing.

'Mr. Dodge: Are these additional roads included in the condemnation suit that was brought some time ago?

'Mr. Starbuck: They were not. As a matter of fact the petition I had filed in here asking
2883 for a cross road was made originally to meet this road which we thought at that time was a county road, but which court proceedings have proven not to be so, so we had that petition changed to read to tide water, intending to plan transportation from Santa Monica by boat. We had a petition signed by possibly representatives of fifteen thousand acres near the Malibu Creek.

2884 'Mr. Dodge: Are there any other parties present that would like to be heard?

'Mr. Scotten: Mr. Chairman, may I ask Mr. Starbuck a question? He stated there were about 15,000 acres represented on the petition. I ask him how many owners of land, how many actual settlers?

'Mr. Starbuck: I think as to owners of land, somewhere about 85 or 90. I wouldn't say ac-
2885 tual settlers. I say actual owners.

'Mr. Scotten: What was the estimated cost of that five miles of road?

'Mr. Starbuck: The preliminary proceedings would have cost somewhere about a thousand dollars. That is all we asked for in that petition, intending to form a road improvement district and create the road by private money with possibly some help by the board.

'Mr. Scotten: How much was the cost of the
2886 road estimated at? I understand such an estimate was made.

'Mr. Starbuck: That is a private matter. That don't enter into this at all, as we did not ask the board at that time for anything more than a preliminary survey.

'Mr. Anderson: A road district would largely embrace this Malibu Ranch?

'Mr. Starbuck: Yes, we intend to include a large part of it, yes sir.

2887 'Mr. Anderson: And yet it is a private matter as to what it would cost?

'Mr. Starbuck: Yes, so far; but I don't mind saying to the board it would be somewhere in the neighborhood of $90,000.

'Mr. Dodge: Was this estimate made by county engineers?

'Mr. Starbuck: Made by private engineers, one of whom is employed by the Southern California Edison Company.

2888 'Mr. Anderson: I might say, gentlemen, that that gives you some idea of what cross roads would cost this county.

'Mr. Starbuck: That is an entirely different proposition. Of the cross roads, this is probably the most difficult one that would be constructed. The Malibu Creek has very precipitous sides. It would have to be carried very close to the top of the canyon.'

2889 Mr. Anderson: I suppose you will stipulate that the petition related to Malibu canyon?

Mr. Burnell: Yes.

Mr. Anderson: Because that is a fact.

Mr. Burnell: No doubt of it. The petition of Mr. Starbuck was for a road through Malibu canyon.

Mr. Anderson: Yes.

A. 'A report was made about that by Mr. Fred Bowles, of the county surveyor's office and

states that preliminary survey would have cost about a thousand dollars, not to exceed that.

'Mr. Dodge: Anybody else.

'Mr. J. H. Crawford: I think it would be interesting to this board if they should just have a statement from one of the petition carriers in scattering this petition over the city of Los Angeles, and let them tell you what kind of a statement they made to the people that signed that petition. One of the statements made at our place by the lady that carried the petition was that Mrs. Rindge was perfectly willing for a road to go through there, but she wanted the state to put it through, for it would be a boulevard, and she was willing to give it to them if the people would sign this petition and kill this mud road proposition, then there would be a boulevard built through there later and another statement was there was nobody this would benefit and that the taxes would come off the people, that they were talking about and they would have to build the road and that it would not benefit anybody, and after the lady got through making her statement every one of them was called and I think she would admit right now because she admitted there, she never was down there, she lives on 36th place and after I talked with her I don't think she got another name. I told her that the statements in the petition itself were absolutely untrue and that

2893 the statement that she was making certainly were not facts at all and she said she certainly didn't know that, that she was only getting paid for carrying the petition and if she knew she was misstating the facts she would not make them and so far as I know she never got another name.

'Mr. Anderson: If the gentleman's statement is correct, if that is true as to those statements being made, we challenge any one that those
2894 statements are not true. Mrs. Rindge made every effort to get the Legislature to provide for a state highway through that ranch and there is no one that will be to any serious extent benefited compared with the cost of that road and moreover the road will come out of county funds in some way, shape or manner.

'Mr. Crawford: The same as every other road falls on the people.

2895 'Mr. Anderson: We don't build unnecessary roads.

'Mr. Crawford: We don't want to build any unnecessary roads and it is up to this board to say whether it is.

'Mr. Dodge: Mr. Crawford you suggested that some of the statements in this statement were untrue. Wi[illegible] statement is untrue?

'Mr. Crawford: I cannot just call to mind, but one statement was that it would not benefit anybody, that it would not benefit anybody at

2896 all. That is one of the statements, I cannot call that to mind just as they are read over, but I read it carefully after the lady handed it to me, but so far as I can see they are all misrepresentations.

'Mr. Dodge: Do you live up in that section?

'Mr. Crawford: No, I live here in Los Angeles, but I have 160 acres up in that section; we are interested of course, that the road be put
2897 through, but it is just laying there, we are paying taxes, but somebody else gets the grazing on it, I don't know who. It may have been the Rindges, it may have been somebody else.

'Mr. Dodge: Is there any location that a road could be built across the other side of the mountain that would accommodate your land?

'Mr. Crawford: I have been down in that country many times and the roads are bad; I have been over those roads and to go around
2898 by the automobile, as far as we could go, around by Calabasas, registers 42 miles from Los Angeles, around and down there as far as we could get, and the other way, down here, by the section line, we are six miles from Santa Monica, so there would be the difference if there was a road at all and that is a pretty bad way to make a road down in there, I think. We got in by being pulled with horses, pulled the same as other automobiles got in there and we stalled occasionally and they would help us out and we

2899 got up that canyon and got up another one and so forth. The roads are awfully bad; they could be made better, and it would help some; but finally the road would have to come the other way and everybody knows it. Mrs. Rindge knows it that sooner or later there will have to be a road through the Malibu and whether it is a state road or a county road or what it is it will be. There is no question
2900 about it.

'H. H. Manley: I want to say, for the benefit of you gentlemen and the people here, that my son and my wife and myself own some 400 acres directly back, I believe, directly north of the Rindge estate, and I think we are either adjoining, or within a half a mile of their property, in sections 24 and 25. I bought this property in good faith and went directly through the center of the Rindge Ranch to look at it. I
2901 didn't know at that time there was any difficulty or would be any difficulty in getting to the property and intended to develop it and make a home. We now live in San Francisco, or San Mateo. Admiring and having more pleasure in this climate than in the colder sections of the north, we intended to build on the property and develop it. It was not only a few days before we saw articles in the paper where the litigation was on and the roads were closed. We are in this position; the property is worth

2902 developing and we have paid the Government for the property and are anxious to develop it. It is impossible to get around the other way and get to our property. I attempted it some two years ago and after riding in an automobile all day and then taking a mule team and going over part of the mountain road, we got to within four or five miles of this property and found it was absolutely impossible to get there with a horse or any sort of beast, and we didn't
2903 get there on foot, and it lies directly back of the Rindge estate.

'Mr. Anderson: Is there a road to it through the Rindge estate?

'A. We could get to it from the Rindge property by either canyon, the names of the canyons I don't know.

'Mr. Anderson: But there is no road?

'Mr. Manley: My son's property runs down
2904 across the canyon directly this side of where your house is. We went through your property and on the other side and up the canyon.

'Mr. Anderson: Have you ever attempted to get up through Las Flores just east of you?

'Mr. Manley: I will say this for your information, that I was guided by a man named Campbell who was thoroughly familiar with the country and if there had been any possible way of getting to the property he would have no doubt taken it. I think the property is worth,

2905 in my opinion, developing, and it would be an asset to the county of Los Angeles and the city of Los Angeles if there should be a road put through there. I do believe, however, that the Rindge people are using a lot of their valuable land today by going directly through the center, of the good soil, and that a road could be built along the foot of the mountain and not use their valuable soil whatsoever, and then give a
2906 chance to each settler, in going through the property, and through the canyons and the mountains.

'Mr. Anderson: Have you ever investigated the advisability of getting a road out through Las Flores?

'Mr. Manley: I told you that I was not familiar with the names of the canyons but I know it is impossible to get to our property without going up the coast.

2907 'Mr. Anderson: Carbon Canyon is less than a mile inside of the Rindge property.

'Mr. Manley: No, it is something else—somebody else says, "Mr. Manley's property is between the Zuma Canyon and Las Trancas. It is absolutely inaccessible as he says anyway but up the Rindge road, and my property is in the same condition.

'Mr. Manley: I only know the locality by having gone there through the Rindge property, to first secure it and afterwards try to get to it

the other way and we were not able to. It seems to me that the Rindge people would be delighted to have a road put through the property, and it seems to me that if they want to conserve their soil they would consent to it going along the foot of the mountain where it would be just as good for public travel and not use any of their valuable land. I am not familiar with the condemnation proceedings or whether they have been started or may not be started, and where they want the road to go, but I should say it would be along the foot of the mountain where it would answer the purpose at the present time.' Somebody said,—he talked about the number of settlers there, 'there may be a few settlers, but there would be many because it certainly is habitable land and it would be desirable to live in, but unless we can get through, it would not be, and I truly hope you gentlemen understand the situation thoroughly, as I believe you all do. I don't believe in confiscating anything. I believe that the Rindge people should be paid for any loss they may be put to, by having the road through, but I do believe a road must go through and it should be done, and the earlier the better, and as far as that is concerned, I believe that a road way through there, that our Government would probably use it before very long, and it may be necessary for them to.

2911 'Mr. Anderson: The Government would not like a coast road on account of it being accessible from the ocean.

'Mr. Kincaid: My land lies right next to Mr. Manley's and many things that have been said here are exactly true, and some of them a little exaggerated. To get to my land I have to go fourteen miles further than by the coast road. There has been an automobile to my door by
2912 the coast road. The other way, I have 14 miles to go, practically straight up and down. I was up there a few days ago and it takes a day to go. You can hardly put a road in that way, if it would, it would cost so much it would be impossible to build it, for me at least, and the same condition exists in nearly all this country. A road through the back way might serve a few people, in some localities, such as the Decker road, but there is a stretch of 20
2913 miles of country, and there are canyons running down through this property to the beach all along every two or three miles, and the people have property all along back of this property. The reason that you have to have a road on the mountain for a distance of some 20 miles, or make numerous roads from this Ventura road, 10 or 12 miles back in. The ranch is only two or three miles wide and it seems to me that it would be better to reach these people from the coast way.

'Mrs. Rindge: Mr. Kincaid is a friend of the Decker's and Mr. Haas is a friend of the Decker's. When we bought the ranch we bought the Haas and the Deckers and the Kincaids with it. Ever since that we have had trouble with them. Mr. Kincaid has property up there. He and his people own about 2,000 acres. Mr. Carl Haas's property is right in the center. Mr. Carl Haas told my son, who was up there surveying—before I leave the subject, I want to say there is a road that goes to this man's place, within a quarter of a mile of the house. Their manager told my manager a few days ago that anyone could pitch a tent on their land. This man we have always had with us. He was with us in the Federal case and the other case. Mr. Walter Haas was before the board of supervisors when my husband first came before the board of supervisors in the first place. We have always had these people at our heels, dogging, molesting, harassing, and doing everything they can do to upset the running of our ranch. We have had all sorts of things laid at their door, which of course I cannot say, because I would have a suit for libel. We have always had this crowd doing all they can. They have about 2000 acres. Mr. Carl Haas has some and Mr. Walter Haas was against us in the beginning. We thought we were through with the Haas's when Mr. Haas resigned as

2917 assistant county counsel, but I received a letter from him the other day as special county counsel. He is already primed and fitted for the job of condemnation at a good fat fee of $50 a day, as Mr. Haas had it through the Federal and state litigation which we had. And now they have this man primed for the condemnation, through the Malibu Ranch, as special counsel for the board of supervisors, and it
2918 seems to me that the taxpayers ought to have something to say about it, and I think it is time that the Haas's went to the bad and get some new blood, to fight a widow and her children, who own the Malibu Ranch. Charley Decker has a school house and I believe it is all due to Carl Haas and these people are always putting them up to things. They would not permit that, if there wasn't this man here in this office aiding and abetting them, in inter-
2919 fering with our running of the ranch and trying to make it impossible for us to carry on the business we are carrying on now. We have grown this year 1600 sacks barley and we have 1200 head of cattle on the ranch. We did have 2272 head of sheep, until the anthrax was started in there by a German, and now we have about twelve to fifteen hundred left out of that lot. We have about 150 head of the finest ranch horses in the state. We have 500 pigs. We have raised 4,000 pounds of beans. Is it

right that this business should suffer for the sake of a few settlers? It does not seem any man of business would allow it to be done. It is good property, doing good work and it is an object lesson for all of those people. Mr. Haas and Mr. Decker simply have been after us on this road, have all said, 'Starving settlers.' If the people want to go up there and starve, it is not my fault. They cannot expect to go on a mountain crag and cultivate a quarter of an acre of cabbage patch, and expect that I can go in there and provide for them. Let them come down and sub-divide my property and take what they want? Two of those persons went through. Mr. Blank and Mr. Houston. They came down from Ventura county. I had a friend with me on the beach picnicing one Sunday. They went through the ranch. They had nothing but a mattress. They stayed in a canyon where our finest cattle were on the barley stubble. Now, I said, "We will notice what those people take out the next day." They took out a load, half of a covered wagon, the wagon box was covered with canvas and half full. Can the Malibu Ranch afford it? It cannot. It stood the depredations of those years, ten years, when we hoped that they would be put out of this ranch. We stood it—although they took 200 pigs from our ranch—and then I have a blank—they took 43 sacks of barley off

my ranch at night and they done all sorts of things. There is smuggling going on through my ranch. These people up there must know it. I knew it. We paid no attention to it because they have burned us off so much we thought the best thing to do would be to keep quiet. That was Uncle Sam's business. And now it seems strange that the Malibu Ranch with its long frontage on the ocean would have to suffer with these people who have a natural way from Topango up through the center, which would give them a fine road through the center, and they have outlets to all that property.

'Mr. Kincaid: I rather take exception to being told there is a road within a quarter of a mile of my place. I want to say that I have been going to this country long before Mr. and Mrs. Rindge owned the ranch. I had a ranch there some twelve years myself, and there is no road, not only within a quarter of a mile of my place but nothing nearer than the road which Mr. McClellan knows is being worked upon now, to the Decker place, which is several miles away and part of that is still a trail. With regard to the smuggling I want to say that the Government attempted once to establish a light-house and a place to look out for this thing on Dume Point, 13 acres—you remember the proceeding—and the award was so high the Government would not accept it. If Mrs. Rindge

2926 was so desirous to keep the smugglers out why didn't she help the Government to establish this lighthouse and do something for the people. It does not appear that she wants to do that. This road she speaks of, put through the heart of the mountains, if you would see it once you would know it would be impossible. One peak to another. Up and down canyons. It would be impossible. You cannot do it. It would be
2927 impossible to make a road running parallel with the coast road, and furnish ingress and egress to all these people. Now there are several other things she has said. There is the implication that we are all related. I want to say for her information there is nothing in that, and I am not related to any of those people that she accuses me of being related to. I am friends to them and have been for many years. My folks have been here since 1872 in this old
2928 pueblo of Los Angeles and I can say I have been at times through this ranch. I have even gone with Mr. Rindge through this property and I have been on it with Mr. Kellar, when he owned it, and when Mr. Kellar owned it it was an open way. At one time old man Keller even deeded this property, but through some fault with the metes and bounds they were not settled and the Government decided it was no way. Now you can get all the roads through the back country you desire, but you cannot

reach all these people unless you are willing to spend several times the amount which it would take to make the coast road. It is the natural way. There will have to be some roads through the canyons. For instance, the canyons which would supply me with a road would supply Mrs. Decker with a road and Mr. Manley with a road. There are three or four—and probably two or three canyons would have to be—but remember these roads would be only a short distance. My house is one mile from the ocean. One mile through Mrs. Rindge's place. The next one would be not more than two miles and the other way we are twelve or fourteen miles from the highway. Now as for building a road fourteen miles and trying to jump up and down those canyons it is impossible. Any engineer will tell you that it is not feasible and it would not be doing the taxpayers, in whom she seems to be so thoroughly interested, it would not be doing them justice to spend money on this mountain road. It would be shorter to Ventura by five miles than any other way, and if Ventura will come in, and I will say I believe they will, it will be one of the best and most beautiful and useful of roads because it will shorten the distance and be of much benefit to the people of the county. I have been going around to the different people to find out their sentiments and I think that in four hundred people there were

only four that opposed to this road and one of them was in hopes of some day getting a job from Mrs. Rindge lathing a house that she expected to build and another one was in the bank where she banked and although he is a dear friend of mine he says, 'I believe the road—I believe in the road, but I cannot do it' and one other, as I recollect, would not sign anything unless he knew exactly what it was. But that is about the percentage that I found opposed to this road and I approached some of the biggest taxpayers in this county. I won't mention any names but there are plenty of them, some of them pay more than Mrs. Rindge in taxes and they are in favor of the road and you will find as you go through the county the universal opinion is "Let them have the road." It should have been done years ago, I went to Compton in regard to this petition. It was spread around there that Compton people are awful—are up in arms. My brother lives there. They wanted to sign a protest against the way it was put through. They thought they were signing for a road and my brother told me to take a protest down there and I could get a great many people to sign. Also down in the Green Meadow District, it was sent to the school house and the school teacher signed it. That is the kind of representation we have.

2935 'Mr. Anderson: I suppose Mr. Kincaid's information is more or less in the shape of hearsay and so far as that is concerned, people desiring to protest this petition should have been presented this morning and not merely represented by hearsay. However, as far as the road to the back section, and as far as that is concerned, I think that the little document I have in my hand which contains Judge Bean's
2936 decision with regard to the investigation made in the Federal case is of a good deal more benefit and value to you, than any statement of any of the interested parties and I will leave this for you and I think you will find it very instructive on the question of roads up the mountain and to the north.

'Mr. A. W. Burke: I would like to say a few things. I know the conditions up there for several months. Mrs. Rindge's statement a few
2937 moments ago about depredations I think they are very much exaggerated. I don't know of any demonstration of that kind being made. I will say, however, her riders have run her sheep over land, cut down fences and dynamited roads and I think that is pretty dirty work myself. There is some mighty good land up there. You cannot see it from the ocean or the state highway, but after you get in the mountains you can see it. It is farming land and it can be made valuable ranches if there is some way

of getting our products in and out. At the present, there is no way of getting them out and if we cannot get ingress and egress, it would be useless and a loss of money and a waste of time. If we could get the crops out we could make a good living. As it is we have to live from hand to mouth because Mrs. Rindge wants to get it all. Now concerning the topography of this country, I have walked over it. That is the only way you can get over it. In building a road in from the state highway it would cost more money than building the coast road. Up and down, up and down. It would cost lots of money now, although I will say that the coast road will not benefit us until some lateral roads were built, but that would be one step in opening the country and when that country is opened there will be ranches and summer homes and country clubs and a great settlement up there I predict.

'Mr. Carl Haas: Mr. Chairman, as you know I am counsel for the county in this road matter. I did not intend, when I came here, to say a word, but my name has b brought up by Mrs. Rindge and I am very . ry for it. I have always entertained the kindliest feeling for Mrs. Rindge and for her sons. I have a half interest in 80 acres that is absolutely precipitous, that cannot be used for any purpose except for grazing. It is in no way accommodated or would be

accommodated by this road—in no way whatsoever. So that clears up a little point in regard to the little 40 acre tract I have up there. Furthermore, in regards to my relations with the people, I want to say I was raised in Los Angeles; that I used to go to school with a number of these people that live up there; they are friends of mine. I visit them occasionally, and I have at all times asked them to be patient, that some time they would get the road. I have warned them against any kind of depredations upon the property of the Rindges, advised them not to cut the fences, advised them to keep at peace with the Rindge employees. I know if anything, anything that I have done, Mrs. Rindge, is more good than any one man that goes into those mountains, and I believe her sons would so testify.

'In regard to the condemnation suit. I would like to say this, that I believe if Mrs. Rindge would take this thing in an unimpassioned way and we could get together on some basis, it would be to the best interest of the county of Los Angeles if the condemnation suit could be dismissed and a road put through there with Mrs. Rindge's consent, and I believe Mrs. Rindge would profit by turning over the road she has through her property and is using at the present time, and the county pay her for the road work that has been done on that road,

because I know it will take a long while before the condemnation proceedings are finished, and it would take a longer while before the road was built that would have to be built over the strip of land taken by the proceedings, and I should advise Mrs. Rindge's attorney, being present, that we get together and see whether we cannot settle this road matter out of court to the profit of Mrs. Rindge and to the profit of the people of the county of Los Angeles. And I want to state that at no time have I ever set my foot down and insisted upon proceedings in court, but it seemed like as a last resort we had to proceed in the condemnation proceedings. If there is any method, I would be glad to lend my assistance to it.

'Mrs. Rindge: I just want to say one thing. When they had the surveyors up there two years ago at a cost to the county of about $10,000 Mr. Carl Haas was up there with my son, and he said, "Now, if you will give me a road to my place, I will put this road through your ranch where you want it," and he says, "If you don't, I will put it where it will do the most harm." Then he goes through the Gates Ranch'—

I have a blank space there. Is that the Gates? I didn't keep up with Mrs. Rindge, she spoke so fast.

'He made a beautiful curve to take in all the land of the Malibu Ranch he can. He goes up there through the mountains and canyons to make a road just as far as he can. He goes through our water system at Zuma, goes where the steel pipe crosses the river. By going 10 feet farther the other side of the bank he could have avoided a cement system. He did not do that. He took the cement system right along. Then he was not content with that. He goes up to Lachusa; he cuts through the alfalfa patch there where he could have gone at the foot of the mountain, destroying as much as he could all the way along; and then he goes through the last sheep corral for his survey, and then gets to the Ventura county line.

'Mr. Haas: Mrs. Rindge, I simply want to state that whoever informed you of that told you an absolute untruth.

'Mrs. Rindge: My son told me.

'Mr. Haas: I never once stated I cared about the road going near my property. I told him the road was over the mountains.'

Then I left out something.

'And as far as the line I had nothing to do with the survey. The surveyor was alone. He set the line and I paid no attention to the line, and as far as the line was concerned, Mr. Hinshaw, the supervisor at that time, went with the surveyor and I was not present at that time,

and they set the lines without my knowing where the lines were going, and I knew nothing of where the lines were going until the map was submitted to me by the surveyor.

'Mrs. Rindge: This is a long controversy. This fight has been going on ever since we have owned the land, the people trying to force a road through there, and they have cost the taxpayers of this county an endless amount of money. The litigation that has been on the Malibu Ranch must have cost this county and state and Federal Government from a hundred to two hundred thousand dollars. They could have paved roads out to the state highway for that and not molested the food producers.

'Mr. Kincaid: Ladies and gentlemen, that same question about the cost of this road might be stated in regard to Broadway here—the same proposition. Mrs. Rindge is interested in that same thing. Everything costs that is worth while. If it is not worth while let us not have it. If it is, let us pay the cost. And that is exactly the proposition. The people of Broadway are going on. Just take the beach alone. Twenty-five or thirty miles of the prettiest beach in California, with the waves breaking on it, and not a soul to look upon it. Does that beach belong to Mrs. Rindge also? Does she own three miles of sea also, or does the beach belong to the people of Los Angeles county? How can they

reach it? There is no way without this road. Certainly they ought to have a right to look upon some of the beauties of nature. You go this side of the Malibu Ranch and you find them all along the beach. They cannot reach that.

'Mrs. Rindge: As long as we own the Malibu Ranch I don't think it is any business of Mr. Kincaid's what we do with the property.

'Mr. Kincaid: Excuse me; I am not kicking about her property; I am kicking about the county's property.

'Mr. Sachs: Now, gentlemen, I happen to be here just by accident, and not directly interested in the ranchers at all. I went to see a man by the name of Haskell and this is what I found out: I found the road was closed. It seemed there was not a single soul there that I met that would say anything good, either in regard to the closing up of the road or in defending Mrs. Rindge or any of her actions—there was not a soul there. I am not interested in any way whatever. The question is, there are a few ranchers,—a few of them have moved out already and the others I suppose will have to. Mrs. Rindge will force them to. There is no other way for them to get along there. They have spent their last penny and they have to leave there because Mrs. Rindge don't want to lose some of her money. Is it right for the amount of money Mrs. Rindge may be the loser

every year that these ranchers should have to give up their last penny, and were given this land by the Government the same as Mrs. Rindge was given hers by the Government, and because she has such an enormous quantity is it right these people must give up their small ranch because she don't want to lose any part of it? The conversation I had with one man that told me—I believe he was an officer—he said that the only thing for the people to do down there would be a plain simple thing, to go up to some—"

I have a blank space then.

"—and get a good six-shooter and give it to her. They come down there and spend four or five years and give their time and labor and every penny and are obliged now to desert it. I don't believe a jury would convict any man who did it. If you gentlemen decide you want a county road down there you would have the right of condemnation, and give her a fair and reasonable amount of money. Why should she expect either an enormous amount of money or expect all those ranchers to give their little ranches up to her. Is it right? What reason has she got but money rights in this case? She cannot talk from a patriotic standpoint. She is not contributing anything to the Government by her getting any more of the food there. The little that she gets would not be a direct con-

2959 tribution to the Government. It is simply a money matter with her, and with these poor devils it is a question of life and death. There was one that had to walk—begged me to take him in the machine and bring him down to Ocean Park. He walked with his wife and a baby, and there are neighbors there that would testify to it. It is only reasonable that something will have to be done for those people. I 2960 don't know where it will have to be cut through, but something must be done, and I believe Mrs. Rindge will surely forego some of her profits. I am not interested in any way at all in those places.

'Mr. Dodge: I hope there will be no desire on the part of anybody to take the laws in his own hands. The laws are made to be obeyed in this country.

'Mrs. Rindge: This is not the first time I 2961 have been threatened.

'Mr. Anderson: I think the last speaker will indicate to some extent the lawless character of some of those people at least.'

Then somebody said—I don't know who was speaking—'I don't think that is fair at all. He says he is not interested in that property. Any of those people that own property up there, you don't hear them saying they will do any bodily harm to Mrs. Rindge.

'Mrs. Rindge: I have been threatened many times since the Federal trial.

'Mr. Sachs: I do not say they would do it, but I said there was not a jury in this county that would convict a man, and I believe so, too.

'Mr. Crawford: That is not the question. That question is foreign to us. People that are asking for some relief up there—we are not talking about doing Mrs. Rindge bodily harm or injuring her property; but Mrs. Rindge don't hesitate to let her stock graze every foot of land up there that they can get over, and she knows it, that they graze on that land.

'Mrs. Rindge: If they cut my fences, how can I keep my cattle in?'

Then someone answers: 'It is easy for her to cut her own fences and lay it on to somebody else. I don't know who cut them. It is easy for her to cut her fences. Why would I cut her fences and let her stock on my land? It would not be fair to say I would cut her fences and let stock on my ranch; it would appeal more to your judgment that her people would cut her fences and let her stock on my land.

'Supervisor Woodley: Mr. Chairman, I move that this matter be taken under advisement."

Then I have a few remarks by Mr. Ostrom, but they are kind of crazy.

Mr. Anderson: Of Mr. Who?

A. Mr. Ostrom.

2965 Mr. Burnell: Are they the same in general character as Mrs. Rindge's remarks?

A. 'Mr. Ostrom: I live up there. I went over the road you propose to build in Castiac. If you propose to do that over Silver (something) over there, there would be about 16 feet there, and it would cost over $7,000 a mile to build a road over there. Now, I am going to wait until the war is over and buy me an aero-
2966 plane, but I simply mean I won't go down to Billy Sunday and have a change of heart.

'Supervisor McClellan: I second the motion.'

And the motion was carried. That is all.

The Court: What man was that who made the motion? A. Mr. Woodley's motion that this matter be taken under advisement."

This witness, Minnie O. Smalley, also testified that as such stenographic reporter of the proceedings of the said board of supervisors,
2[illegible] she was present and took down the proceedings of the said board at its meeting of May 27th, 1918, to the best of her ability.

"Mr. Vallee: The second meeting. Miss Smalley has written her notes up of that meeting, and we have only one copy. I thought we might stipulate that she may read from the copy, or we can read it.

Mr. Anderson: She may read from the copy, or if you would like, I will read from the copy.

2968 The Court: It is agreed that Miss Smalley may read.

Mr. Anderson: This copy is correct, to the best of your knowledge, Miss Smalley? A. Yes, sir.

Mr. Vallee: I will read it, and then Miss Smalley may go.

Mr. Newby: I wish to suggest that when counsel reads Mr. Newby's speech that he give
2969 the proper modulation.

The Court: Perhaps we had better let Mr. Newby read it.

Mr. Newby: I have no objection to his reading it.

Mr. Anderson: We want it read into the record.

The Court: You read it, Mr. Vallee. Will Miss Smalley be required any longer?

Mr. Anderson: Let me make this suggestion,
2970 that if you have anything further to offer from her, we are willing to take it up out of order and read it after she is excused.

Mr. Burnell: We can send for her if we need her. I think we have covered everything on that.

Mr. Vallee: I will read it:

'Proceedings of the Board of Supervisors *in re* Malibu Road, May 27th, 1918. Present: Supervisors Hamilton, Dodge, McClellan, and Delorey.

2971 'Mr. Hamilton: The next special order will be this hearing on petition for abandonment of proceedings for opening road through Malibu Ranch. Will the clerk read the petition?

'(Clerk reads petition dated May 8th, signed by May K. Rindge, etc.)'

Mr. Anderson: It may be stipulated that that is the petition that is already in evidence.

Mr. Vallee: Already in evidence, yes.

2972 'Mr. Hamilton: What is the pleasure of the board in regard to this matter? I suppose we had better hear the petitioners first, and then give those of a different mind a hearing.

'Mr. Nathan Newby: Mr. Chairman and gentlemen of the board: We file this on behalf of the Rindge Company, and the statements of fact herein represent the basis of our contention and in support of the petition as filed. The board doubtless are quite familiar with the his-

2973 tory of this opening. The suit has been pending for the condemnation of the Malibu Ranch for a number of years, that is, the big suit for the large portion of the property, and as stated in the petition, long prior to the declaration of war by the United States. I take it that it is not now a subject of discussion as to whether or not the public necessity requires the opening of that road as of the date of filing of the suit or the passing of the declaration of intention that it would be opened. I take it that it would not

be a proper time or place to decide that question, because we are assuming for the purposes of this argument that if it was the proper exercise of the discretion of this board in the public interest to open the road at that time, that an entirely new situation now confronts the board and confronts everybody in this county, which absolutely requires a reconsideration of that declaration in the light of the new facts. I take it also that it is not necessary to call the attention of this board, but all of us will realize that the Congress of the United States, in recognition of the fact that the United States is up against the most colossal proposition that has ever been presented to vindicate those high principles upon which our Declaration of Independence was founded, and for which we entered into this war; that we must conserve our energies and concentrate all our resources in order to win this war. In other words, all of us have recognized that whatever may have been proper anterior to the war, that there is just one question presented to the American people and every political subdivision of the American people at the present time, and that is, all our resources, physical, financial and every other kind must be mobilized and concentrated upon this supreme issue of defeating autocratic Germany and all it stands for. In consideration of that provision, Congress of the United States passed this

law to which we refer, and certainly the spirit of that law as interpreted by the Capital Issues Committee at Washington and its sub-committee in California applies to just such a proposition as presented here. You will remember that the city has recognized already that it does apply and they are proposing on every proposition on which they have not passed beyond the stage they can stop without serious loss, to abandon those proceedings until after the war. As to a few of the proceedings that had gone so far the city attorney ruled that it would be impossible to abandon the proceedings without serious loss, what are they proposing to do? Not that they will go on regardless of the opinion of the Capital Issues Committee, but that they will at this time make application to that committee for permission to proceed and to issue the necessary securities or expend the necessary money. It may be said that you don't propose to issue any bonds, but you can't condemn this piece of property and spend money down there without coming within the spirit and the meaning of this law to which I am referring, and as indicated, the attitude of the Federal Government with reference to these matters, they are even extending the application of the law to foreign countries. Doubtless you saw in your papers last week that Mr. Elliott, the collector of customs, to whom is delegated the duty of enforcing this

2980 law in this regard, refused to permit supplies for road building purposes to go to Mexico, for this very reason that we must conserve those supplies for the purpose of sending them to our allies across the seas to win the war.

'Now, I think in your hearing in a recent session of the supervisors of the state, Judge Bledsoe made a statement which was applauded, and doubtless all of us applaud as correctly
2981 interpreting the spirit of this law as it should be applied to every public improvement that requires the expenditure of money, the expenditure of labor, and any of those things that might be used for this higher and more important purpose, however important this other may be in peace times. What was it he said? (Reads from newspaper clipping.)'

Have you got that newspaper clipping?

Mr. Newby: I will try and find it. I don't
2982 know whether I can or not.

Mr. Vallee: I will proceed with the reading. 'Now, that is simply but a simple statement that we all agree to, and doubtless resolutions were passed by the state board of supervisors emphasizing and approving that sentiment. Now it cannot be contended here that this comes within any exceptions mentioned there. What reason is there why, if this is a desirable public improvement, it could not wait until after the war is over, even though the war should last seven

2983 years? People that may have been living up there and claiming that they need this road to get out doubtless have been living there for a number of years, and they certainly would not be so unpatriotic as to say that if necessary to use the same method of transportation or means of exit from their present places of abode for the next two or three years until the war should be completed, if it should last that long, as
2984 they have been doing heretofore, they will not do so. They certainly could not expect the county to expend thousands of dollars in order to furnish them a right of way to get out if it would violate the spirit of this act I am talking about and the spirit that seems to be uniformly applied by all of the cities and boards of supervisors throughout the country. I violate no confidence in saying that Mr. Sartori, the representative of the Capital Issues Committee of
2985 this state, has told me what he will undoubtedly tell any member of this board, that boards of supervisors and city councils all over the United States are now submitting their budgets to the Capital Issues Committee before they will inaugurate any new improvement that requires the expenditure of any considerable sum of money. Therefore we say that we are absolutely confronted by this changed condition of affairs that requires new treatment. Now, a great deal of money has already been spent in useless litiga-

2986 tion over this Malibu road proposition, and while it has been suggested that this new proposition would not cost much money, I submit that the report of your own surveyor will show that it will cost a great deal of money if you condemn this right of way and build the road. It has been suggested, I notice, in the public press that all you propose to do is to condemn the road and then not build the right of way. That
2987 defeats the whole argument. If all you propose to do is to condemn the right of way—which I submit will cost some money even in that case—and do not propose to build the road, then all of this argument about furnishing a highway for the suffering settlers in that neighborhood falls to the ground, because you propose to make it simply a mental kind of highway, a theoretical highway without building the actual road. Therefore we submit that we ought to
2988 confront this question fairly and say that if you take the first step of getting the decree of condemnation it necessarily follows that you mean thereby to say that you will ultimately complete the road; otherwise you are simply bothering the litigants for nothing, because it will not get the highway if you don't propose to spend the money to accomplish that purpose. Now, it seems to me there are just two question here today. First, are we ready to harmonize the action of the board of supervisors

of this county with the announced policy of the Federal Government, with which policy all of us, I take it, are in perfect harmony; in other words, as patriotic American citizens, we are ready to forget for the moment our private interest and convenience and say, yes, until the war is over we concentrate all of our money, all of our man-power and all of our labor on winning this war. When that is over, it will be time enough to fight out our many differences over location of roads and the like.

'Now, as to the cost, of course there have been some estimates made, and as I understand it, our estimate stated in the petition is not far afield of the amount that would be required to build a highway such as has been suggested, and the few people who are living in this neighborhood that would be benefited by the building of this road, I take it, are not yet ready to advance to this board that in these war times that the private convenience of the half dozen or dozen, it may be, who may be there, would be willing to place an obstacle in this larger policy that is announced by the Government, in which we are all acquiescing, because if you once let the bars down and say you will do it here, then you will be called upon to do it somewhere else, and this announced policy will have no beginning and no ending. In other words, the exceptions will be so numerous that the policy will not

2992 amount to anything. The gentleman facetiously remarked about the interest that is taken in this proceeding, and assuming that all the gentlemen and ladies whom I see here are interested in this special proposition. Doubtless we are indebted to our friend there for getting them here, and I want to read his letter. It is entirely an improper issue that is presented here, and not the basis of our proposition. It is printed in the
2993 Santa Monica paper. It says:—

'Mr. Hill: I have not seen it.

'(Mr. Newby reads letter by County Counsel Hill printed in Santa Monica paper.'

Have you got that?

Mr. Newby: We have a copy of it. I think I can find it.

Mr. Anderson: Here is the letter that appeared in the Santa Monica paper.

Mr. Vallee: I will read it:

2994 'Secretary, Santa Monica-Ocean Park Chamber of Commerce:

Santa Monica, California.

Gentlemen:

I beg to call your attention to the fact that a hearing is set before the board of supervisors for Monday, May 27th, 1918, at 2 p. m., at which time the representative of the Rindge interests will make an effort to obtain action from the board of supervisors of Los Angeles county

2995 looking to the dismissal of the condemnation case of the Malibu road.

'We have had the matter up with Mr. McClellan, who is with us to the finish, and I take this opportunity of advising you, who are so vitally interested in this project that you may lend us your help in securing this road.

Hoping you may see your way clear to have a large delegation present at the hearing, I beg
2996 to remain

Respectfully yours,
A. J. HILL, *County Counsel.*

'Mr. Newby: And doubtless as a result of Mr. Hill's earnest invitation, a great many of our very best people in Los Angeles are here, and I want to join with him in congratulating our public spirited citizens that they are here so that they can hear the basis of our application. I believe the Santa Monica Chamber of
2997 Commerce issued a proclamation and letter in which they promised to furnish free automobile rides to all who wanted to be here, and however they may have been transported they are here, and I want to say to them as God-fearing American citizens, I congratulate them on being here to hear the basis of our application, and I would like for any one of them, or their representatives, today that are in harmony with this Federal policy that has been pronounced, and if they are willing to abide by that I make this

challenge, that instead of passing a resolution absolutely abandoning it during the war, that you put it up to the Capital Issues Committee to say whether or not this is a war essential that you should build this road, or whether in the interest of patriotism it ought to be postponed until after the war, and I am sure that if this committee, composed of patriotic American citizens, some of them residing in our own city, will say that the proposed condemnation of this road will contravene this announced policy, they will as good citizens be brought to acquiesce in that policy and postpone this whole business until we shall have licked Kaiser Bill and made the world safe for democracy, which we are going to do ultimately, of course.

'Just one other point and I will have had my say. Notwithstanding the announced conviction of Mr. Hill that 'Mr. McClellan is with us,' thereby identifying him with the opposition to this petition to the finish, because it is in his district, I want to say that I believe Mr. McClellan—I guess his name is Scotch—that when he hears and visualizes the scenes across there where the Scotch Highlanders are fighting this battle for the vindication of American as well as Scotch ideals, that it will so stir his blood that for the moment he will forget this road proposition and putting a road through Malibu Ranch in order to accommodate a dozen or two

3001 people, and will have the larger world vision. When we shall concentrate our efforts and for the moment forget our petty differences at home, and let the Rindge people and the other people who may be called upon to spend money here, put it into other things, Liberty Bonds and Red Cross and War Savings Stamps and the other things that go with it. And I don't believe Mr. Hill spoke with the authority of Mr.
3002 McClellan when he announced before the hearing that Mr. McClellan would remain to the end. I remember a famous Bibical scene when, you remember, the dancing girl danced before Herod when he was drunk, and demanded as the price the head of John the Baptist; that he very much regretted that he had made the promise, but because of his oath he would stand by it. Of course, all history said about him that Herod made the wrong promise, and he would have
3003 been highly honored if he had forgotten the promise that he made and have come to the correct conclusion and refused that request. So we are saying here we ought to forget what was the condition two years ago when this suit was authorized, and since then we have been confronted with this other issue, and we will deal with this question on this one basis, on the basis of our occasion here.

'We will say in conclusion, this will cost a large sum of money, both county and individ-

uals. In the second place, that it will cost a large sum of money, and in the third place no overwhelming public interest demands that now, at this time, before the suit has been heard and before the money has been expended, that we should not proceed, and that the public interest would be best conserved by postponing it until after the war, and that is the basis of our application, and we confidently submit it to the board for action on that basis.

'Mr. John Clifford: An old soldier and myself have 80 acres up there; that is all we have got, but as the gentleman says, there is only a dozen people interested. I suppose there is only a dozen people interested; all the others are boys or women. As this gentleman says, of course we ought to put our money in bonds, but look at the way they have to go around; to raise stuff and take it through the Malibu Ranch. Now, I contend that the money the Rindge estate has spent in fighting this road, as a matter of justice to the people, I say that if they had put that money in thrift stamps or Liberty Bonds and given the right of way through there, as a simple matter of justice—and I believe I am talking to a board of supervisors that are permeated with that idea, and they are asking simply for her to knock down the fences through the Rindge Ranch and let them go through. Isn't that a simple matter? They don't want a

3007 macadam road. I believe in every word this gentleman has said, and I don't want to expend any money to build that road. We simply want the coast road so that we can get our produce out and not go around like going to San Diego to go to San Francisco. Now, gentlemen, I leave it up to you as a simple matter of justice. We don't want to spend a million dollars. I don't know how much it would cost,
3008 but the people need a road, and they can buy thrift stamps and Liberty Bonds if they can get through that ranch. While I was up there last summer there was a man came along; his mules had got into the Rindge Ranch through some fences being down and they would not let him take them out. Finally they let him take them out, but said if they ever caught any more in there he would not get them. It is up to you gentlemen to let the road go through.
3009 Just to knock the fences down and let the people go through as a matter of simple justice.

'Mr. Hamilton: We had better hear the petitioners throughout before proceeding with the other side. Do Mr. Anderson or Mr. Guernsey desire to be heard?

'Mr. Guernsey: Not at this time.

'Mrs. Caster: I have 160 acres on the Decker road, back of Mr. McAl, so I have heard about the Rindge road although I don't have to use it. But it would be very nice for me to get through

3010 the coast side. I went in there last fall and brought some supplies up. I went in there last Monday and had to go through the other way. * * * (could hardly understand.) Another thing, this gentleman told us about the war. Well, if the Rindges would do anything good for the war they would give us the road through there so we could raise stuff and get it out. They would do a good thing for the Govern-
3011 ment. * * * People used to go to Switzerland to see the beautiful scenery. We have it in our country and Mrs. Rindge shuts them out and won't let them have a peep at it. If she had put one of those rocky hills in there I would not say anything; it belongs to her; but the Almighty God has put them there for every one of us to look at and take a peep at. That is all we are trying to do, only to give us a narrow road to come in and look at them. Now, if there was a
3012 new road they would have to come through my land to meet the other road. I have 160 acres; I am willing to give 40 to help them make it for those settlers, although I could get out without that. So there would not be any expense at all. We settlers would fix that up to meet the other road. I am not rich, but I don't class myself poor. I am a widow for the last 18 years. I have raised three children with work in a tailor shop. I took that land for my boy; he is kind of sick. So I think for that I am

3013 nothing against her, but I give all that land for the road so people can get out. I think Mrs. Rindge instead of fighting not to sell the land, ought to give this road and help us raise stuff for the Government.

'Mr. Newby: How many acres have you in cultivation?

'Mrs. Caster: I can't get in to get the grub in. It takes me three days and I eat it up and
3014 I have to go and get some more grub. I can't cultivate it.

'Mr. Newby: Is there any of it capable of cultivation?

'Mrs. Caster: Yes, sir. You could not buy it off me. I value that. I think I could cultivate 80 acres, good fruit land.

'Mr. Newby: You go by the Triunfo road?

'Mrs. Caster: Yes. Before I used to go through Cornell, but I could not get through
3015 there at all.

'Mr. Newby: You have an outlet by the Triunfo road?

'Mrs. Caster: It is not for me. I am willing to give 40 feet of my land and help make it, because it is for the interest of my country and for the interest of the public. That is the way I feel.

'Mr. Newby: Were you born in this country?

'Mrs. Caster: I was born in Chicago.

'Mr. Newby: Chicago is in America, I admit that.

'Mrs. R. L. Mason: During the ten or twelve years or more that the Rindge road fight has been on, the Rindges have introduced every conceivable reason under the sun why this road should not go through. Why at this time of war do they come forth with this sudden burst of patriotism. An opportune time for those with selfish interests to use this means to appeal to the public sympathies and to work on this legal phase that their lawyer has presented to us. I am not a lawyer, and I am simply an unsophisticated woman, but I know justice and right, and it is simply abominable the way they have done through all these years, and it is time something was done, and we are going to see that something is done, and we feel we have enough backing now and enough people of influence interested that they are going to see that we get justice. Now, there is not one of those people—hundreds of people, not, sir, a dozen or half a dozen as you stated a moment ago—but hundreds of people that will be benefited, but not one of those people would ask you gentlemen for one dollar, for one cent, if it was going to rob the United States or our soldiers or our cause in this war. Their attorney has said that if we simply get the right of way through there and don't go and build a highway,

3019 that it will be simply a theoretical road. Was that a theoretical road that I traveled over 12 years ago and that other old settlers traveled for 40 years, as they testified before the Government hearing in this case? No, they were able to get back and forth over it, and they brought their produce down and they were making good livelihoods there and raising families and doing what the Government is urging us to
3020 do today, to go to the soil and produce. That is what we want to do, sir, that is what we have been prevented from doing all these years because we have not had the roads. The discussion as to how many will be served does not need to go into it, because everybody who is familiar with this case at all knows of the vast number that there are located back there through the Malibu country, and the audience here today testifies to that, so I will not go into
3021 it. When it comes to a proposition, however, of benefiting the country, giving help to the Government, I want to say that here a short time ago Governor Stephens brought up before the State Council of Defense the subject of having a road along the entire California coast for a highway in case of emergency, or in case of invasion on the Pacific Coast at any time that the state would be able to protect this coast, and he suggested that a highway be built and a railroad run along parallel with it, that they

might transport the heavy coast artillery. Now, you may say the Pacific Coast will never be invaded. Well, we did not think here some years ago that the United States would ever be embroiled in the war it is at present, and if the United States had been prepared some years ago as they should have been the Kaiser would have had his quietus placed upon him long before this. It may be we will never have an invasion of the Pacific Coast; we hope not; but if there ever should be an invasion of the Pacific Coast, a highway along this entire shore would be invaluable to the Government, and they would give the state a mighty fine "Thank you" for having built it.

'Mr. Newby: Would you be willing to submit that question to the War Department as to whether it would be a military question?

'Mrs. Mason: I am simply stating that as a possibility of what might be. Now, at the present moment we are not asking for that, sir; we are simply asking that that road be opened so that we can have access to the country. We don't care whether they spend a dollar on it. We traveled it for forty years; I have traveled it for twelve years along that coast. We can get along with it as it was before this last controversy. We are willing to take it as it was without any money spent on it.

3025 'Mr. Newby: Would you permit a question? I understand the new survey does not go over the old road except in a very small portion of it.

'Mr. Hill: Practically all of it goes over the old road, so the lady is right.

'Mr. Newby: There is a difference here. Mr. Scotton says just a small part of it is on the old road.

'Mrs. Mason: Questions have been brought up in various discussions by Mrs. Rindge's in-
3026 terests that smuggling has been going on up there. I don't know who she is intimating smuggling has been conducted by, but with the road closed, with no access over there for the Government's officials, or others, there is great possibility that smuggling is going on there, and of course smuggling could only be done by those who have access over that road and through there.

3027 'Mr. Newby: You don't include the lawyers in the smuggling do you?

'Mrs. Mason: That is the natural assumption that one might make. The Government's officials have informed me that their officers have had cases that they should have gone up along that coast and they have been unable to on account of the obstruction in the road. Is it right that you should deny the Government's officers a right to go about their own business?

'Mr. Newby: I think you are mistaken there. Mr. Elliott, the collector of customs, who has control of this, has been not only granted absolute right but has had men sixty days at a time there, he informed me one week ago.

'Mrs. Mason: I have this statement from one of their men.

'Mr. Newby: I know Mr. Elliott and he told me a week ago he had been up there sixty days at a time trying to capture the smugglers, at the special request of Mrs. Rindge.

'Mrs. Mason: We will let it go at that. However, I know sheriffs and various ones have been turned back on a number of occasions in past years. However, there are many others that will have a word to say on this also, so I will simply say that we are not asking that any of the war measures suffer through anything that should be granted us, but we want access to and from that country and a right to pass over that road, whether there is a cent spent upon it or not. That is all we ask.

'Mr. Guernsey: Mrs. Mason how many acres do you own up there?

'Mrs. Mason: Something over 320.

'Mr. Guernsey: Where is it located? A. In sections 17 and 18.

Q. How near this proposed county road? A. Some two miles on a straight line.

3031 'Mr. Newby: Do you live there? A. I have not been able to live there, because I don't intend to go up there and half starve myself. Fortunately I am situated so that I can stay in the city.

'Mr. Guernsey: Is that property under cultivation? A. Not this season.

Q. Was it last season? A. Yes, sir.

Q. How many acres? A. I could not tell
3032 you. Probably about 30 or 40 acres.

'Mr. John H. Mundell: These gentlemen are speaking of the cultivated ground. I think if they get up along the Ventura county line where they have to pack their beans out and pack their groceries in over some of those trails, go up this year and see the crop of beans there,—there will probably be 1000 sacks—and to really pack them on horseback, I think they will be willing to leave that road open until after the
3033 war, if they want to be patriotic. There we have been packing in groceries for three years, * * * let alone backing the beans out.

'Mr. Newby: Do you live in this county?

'Mr. Mundell: I live just across the line.

'Mr. Guernsey: How many acres have you?

'Mr. Mundell: 160. I am farming about 30 acres this year.

Q. How long have you been there? A. Nearly ten years.

3034 Q. How far are you from this proposed county road? A. I live 1-½ miles from this road if it goes to the Ventura line.

Q. I mean the proposed road and over the Decker road. A. Then I will be 6 miles from the Decker road, but I am a mile and a half from the end of the Malibu road at the Ventura county line, and I will say there will be close to 1000 sacks of beans raised there.

3035 'Mr. Newby: Does the proposed condemnation suit extend to the Ventura line?

'Mr. Hill: Yes, it does.

'Mr. Mundell: And I will swear we can't hardly get our groceries in, Mr. Hill knows.

'Mr. H. H. Manley: I have listened to the attorney for the Rindge people, and I want him to know that myself and wife and a few others that are here did not come on account of a letter that we saw in the paper, and on the contrary it
3036 was the interest we have in the development of the property that we own back of the Rindge estate. I spoke here some months ago. I told at that time we have 440 acres of land directly back of the Rindge estate, sections 24 and 5. We cannot get to it in any way, shape or form, excepting through the Rindge property. To go around the other way would take days, and the mountains are so precipitous that it would be impossible for us to carry food or supplies or anything there. When I spoke some months

ago I proposed at that time that the road be put through the land bought from Mrs. Rindge and pay her a respectable price for it, but it did not seem to me from her talk that she wanted to dispose of it at all,—merely an objection to keep the settlers from her property and block development. Now, all of this land I own in there I cannot do a thing with. I don't live there, although I would like to develop it. I have prepared to, and have already arranged some two years ago for a man and his wife to go in there and develop this property for me, and the only thing that has blocked me is the fact that I can't get to the land, and the only way I will ever be able to get to it is through the Rindge estate,—the road I went over when I bought the land, and a road that is quite good enough for anyone to use today without any money spent on it. As I remember the road it was quite passable and good enough, although as the lady said some time ago, I do think, regardless of the expense, that it might be to the country's interest that a road be put through here at this time even and all along the line; it would be one of the best protections that our country could have. The time may come and it may come any day when we need something of that kind. Traveling as I have through the tunnels of the Southern Pacific road, and realizing as I do that one charge of dynamite would

3040 blow one of those tunnels to pieces and block travel for months, a road along the coast would be the only thing that would save the country, and I believe that even though it cost a million, two million or five million, the way money is being spent today for our protection, that it would not be money badly spent.

'Mr. Newby: Don't you think that ought to be left to the War Department as to the military road?

3041 'Mr. Manley: I think the War Department have at the present time quite as much on their hands as they care to assume, and that our local affairs should be handled by those competent of handling them here. The number of settlers I cannot speak for, although I do know that there is in my own family five that would be with me in the development of the 400 or 440 acres that we have, and it is only a small piece of what

3042 lies behind the Rindge property. It does not appear to me that it can be from a patriotic standpoint that the Rindge people refuse, deny those who have spent their money and have tried to develop that property, it don't seem to me it can be from a patriotic standpoint, because the development of the ground behind there will bring more than all the Rindge property together, although they have the choice section; they have the level land, which is much more easily developed and cultivated. Things

3043 can be raised on that mountainous ground. Goats, sheep, cattle, all of which would be looked upon with a great deal of favor by our Government today. The development of that property behind cannot be made until the road is opened, and the sooner the road is opened the better it will be for all concerned, and it certainly will never reflect any discredit on those who have been most instrumental in having it opened.

3044 'Mr. Guernsey: How many acres have you up there? A. 440; representing 40 acres of a friend.

Q. How long have you owned that property? A. Several years.

Q. For what purpose did you buy it? A. Now, I don't know; what do you buy property for?

Q. I thought perhaps you bought it for the reason that you thought some day the county
3045 would build a boulevard to your place. A. I don't know; I have not given that any thought?

Q. Lots of the people have, and you will hear more about that later. A. I have been assessed for a great many roads; have helped put in roads through different properties. This is not the only piece I own.

Q. Is it level? A. I am level.

Q. I am asking you if the country is level up there. A. Down where the Rindge property is.

3046 Q. I have not the least idea about your property, if it is a mountainous country, fit for goats, or level. A. You have probably been up there.

'Mr. John Fitzpatrick: Honorable board of supervisors and ladies and gentleman: If these people—the Rindges—want to talk about being patriotic—I drove in there over a road, and afterward this road was closed up, before the war was declared, and I think their duty
3047 should have been to have throwed the road open at least until the war was closed. We had seven men in there of draft age and five of them have been called, and one man crawled out through the brush, through a trail that he had been written a notice not to travel over, and went to the officials to give himself up. I notice in our papers, ladies and gentlemen, that our men here where they have got a road have
3048 taken their mothers and brothers and sisters with them to the train, with a basket of good fried chicken and one thing another. He could not do it. I am not able to get up here and make as flowery a speech as the Rindge's attorney, because I don't know how, but if you want to talk patriotism, I think a man when he is drafted should at least have the right to drive his horse out to his county officials.

'Mr. Guernsey: Mr. Fitzpatrick, you live in Ventura? A. Yes, sir, a mile and a half, and

my ranch is 80 rods from the Ventura county line, and the only access I have in any way to bring my produce to Santa Monica will have to be down along the coast into Los Angeles county.

'Mr. Hamilton: Any good American citizen is welcome here, whether he is in this county or not.

'Mr. E. B. Parks: Gentlemen, I took up a homestead there, I filed on it a year ago this month; I got in four loads of stuff, merchandise, groceries, etc., before this road was closed. Since I have moved up there I have to go in over a trail and pack about three miles. It has bothered me considerably by not being able to go over the road which I went in on, which I have been going over since 1914. I have always used the coast road, and I the same as all the other settlers in there,—which is a good many—have used that road and have no other way of getting in and out without packing over a trail, and won't have for a good while to come on any other road. If this road was opened at the present time we could use it, the same as we always used it, the same as we got in there first, and I think it would be patriotic of the Rindge Company to open that road at the present time, and if they want to postpone this until after the war is over, they should open up the road and give the public the use of it at

3052 least. But they don't seem to be willing to do that. They just wish to keep the public out and stop the people from using it. I don't see any use of going further with it or allowing them to continue to close that road when it is bothering the public as it is. My place is at the county line; it is divided, partly in Los Angeles county and partly in Ventura county. I am living in Los Angeles county.

3053 'Mr. Guernsey: How many acres do you have? A. 240.

Q. You live at Venice? A. No, sir, I live up there.

Q. How many acres have you in cultivation? A. I have none in cultivation except a garden this year. I was unable to cultivate because I was unable to get my implements in there to cultivate with.

Q. You could get them in from the Ventura
3054 county side? A. No, sir.

'Mrs. O. H. Kapler: Sections 18 and 19, 160 acres. There has been so much said about there being a dozen or so people in there. I would just like to say that in the radius of about six miles, that is, in and around Los Alisos Canyon where we live, we have 17 families actually living there right now, every day, and in that land there is not one piece of Government land to my knowledge that has not been filed on by someone, either under homestead, isolated land,

3055 or the many Governments acts that we may take under. There is not to my knowledge one piece of land left, and we have a Sunday school there with as high as 30 in attendance. We ourselves used to come in, as one gentleman suggested that we now come in, by the coast road. That is all we ask, that we might come in the way we went in originally. We are not asking the county to build a boulevard today, during this
3056 war, and as to patriotism I would like to ask, would it be more patriotic to close up all that land when the Government is telling us to cultivate all land? Back to the soil and raise all we can. Will it be more patriotic to close that up and leave our cattle in there to starve? We can't get them out, and they will starve unless we live there and take care of them. We ourselves lost 10 head. That is small in comparison with what Mrs. Rindge had,—I sup-
3057 pose she lost too,—but she could at least get things to hers, but we could not get stuff to ours because we could not pack it in over the road we have. When we went up the coast we lived 30 miles from town, and now it is 60.

'Mr. Newby: The reason you lost cattle was because of the drought? A. Because we could not go out and buy feed.

Q. Very few people do it. A. We would have if we could have gotten it. We would not have let our cattle die for feed.

3058 Q. How many acres have you in cultivation? A. We have never had our cultivated land surveyed, but it is something in the neighborhood of 20 acres, and we are clearing all the time, and we are living on the land, and there are a great many people who own land in there who would be glad to live on it if they could get to it.

'Mr. Guernsey: Mrs. Kapler, how long have you lived there? A. We filed on the land when
3059 we were just old enough to make our filing, so it is something like 12 years ago. We have lived there according as to whether the Coast road was open or closed, and we could get there or not.

Q. You never have used the Decker road? A. We are using that now. That is the only way we can get out.

Q. What do you call the Decker road? This
3060 proposed survey? This link that would connect the roads? A. About a mile or mile and a half.

Q. And the old road? A. It went right to our door up the coast. That is the road we went in there by and we have always used.

Q. You have 20 acres cultivated? A. Yes, and we have a good deal more that can be cultivated as we are able to do so.

'Mr. Delorey: Can any parties here furnish us with the information how many acres are

3061 under cultivation up there, and how many acres were not put under cultivation on account of this road being closed?

'Mr. Scotton: I might state we had a survey made of acreage under cultivation by those people in the mountains that were attempting to use the Coast road, and the total was a little over 400 acres under cultivation or ever had been under cultivation.

3062 'Mr. Hill: Mr. Scotton, it is a matter of fact, isn't it, that the Rindge interest, either direct or through dummies, has acquired 36 different pieces of property up there, hasn't it?

'Mr. Scotton: Absolutely no, not one identical acre, not one acre.

'Mr. Hill: They have acquired no property back of the original Rindge Ranch.

'Mr. Scotton: You said through dummies. They have purchased property back of the 3063 ranch, in 1901. He never was able to make a living on it. He was very glad to sell it.

'Mr. Hill: Isn't it a fact that the Deckers alone have about 200 acres under cultivation?

'Mr. Decker: We have 80 acres in our bean field, and in our 160 A. homestead we have 12 acres in barley this year. We have 4 acres in corn, 2 acres in potatoes. We have acres of vineyard set out, and that is not all that can be put in but that is all we could put in this year. We could put in nearly 100 acres of our 160 A.

3064 homestead, and the 80 we have in beans that could be nearly doubled.

'Mr. Hill: How many acres? A. I have in the neighborhood of 100 acres in cultivation this year. I could put in about 200 acres or 225.

'Mr. Hill: Mr. Decker, how many acres did you say are capable of cultivation that would be tributary to this road?

3065 'Mr. Decker: In the neighborhood of 1,000 or 1500 acres, maybe 3,000.

'Mr. Scotton: Mr. Hill, I would like to have you explain to the gentleman who has just made the statement, what road you have reference to, the road on the Malibu Ranch along the coast, or the road from Charlie Decker's house over to the (?) property?

'Mr. Hill: I mean the territory that would be accommodated by that Malibu road.

3066 'Mr. Scotton: The old road; that is, from the eastern end of the Malibu Ranch up to the Ventura line, and then across to Little Lake.

'Mr. Hill: Here is the thing this board is interested in. They are wondering how many acres of land that could be put under cultivation that is tributary to this road.

'Mr. Newby: Let me ask you a question. How many acres of level land does the proposed road destroy? I understand 160 acres.

'Mr. Hill: May have been in cultivation once.

'Mr. Guernsey: It is now.

'Mr. McClellan: That is impossible.

'Mr. Scotton: Mr. Hill, will you kindly ask Mr. Charles Decker if it is not a fact that a large percentage of the property he says can be cultivated is already taken care of by the Decker road, that has been constructed by the county from Little Lake up to Charlie Decker's home place at the present time.

'Mr. Hill: Do you know there has been only one stripped Ford ever been able to get over that road?

'Mr. Scotton: I am not talking about automobiles.

'Mr. Hill: But you are talking about roads.

'Mr. Scotton: They want some way to get their produce out. That is what they are talking about? They are not talking about using a Ford, but with horses and teams. Kindly ask Mr. Charlie Decker how many acres can be served by this Decker road, that the county has already improved up to Charlie Decker's place; I will not say all the way.

'Mrs. Decker: It is just one strip, about a mile and a half.

'Mr. Scotton: Improved so that it is more easy.

'Mrs. Decker: I will tell you, I and the girls

3070 went out with the mules and plowed out a place so that we could get a team over it.

'Mr. Scotton: That is not unusual; everybody has to do that, even the Rindge Company.

'Mr. Decker: When we spoke of cultivated land we did not refer to that in our immediate vicinity. It would take in many acres * * *

'Mr. Scotton: Mr. Hill, before you go will you answer my question? Kindly find out from the gentleman, Mr. Charlie Decker, who made
3071 the statement of about 1700 acres of land that could be cultivated that would be served by this Malibu road; I want to know how much of that is served by that portion of the road that runs from Decker's home place northerly to Mather's (?) Lake, and what portion of that would be served by a road from Decker's place down to the ocean and along the Malibu coast.

'Mr. McClellan: Never can be served prop-
3072 erly, any of it in there, without your coast road.

'Mr. Scotton: Mr. Hamilton, a question has been asked by Mr. Hill for the acreage that would be served, in order to give this board some idea of the amount of acreage already under cultivation or could be cultivated if this road would be put through, and the statement has been made, 1700 acres. That is in your minds. Now I think we ought to find out as to whether the whole 1700 acres would be served by this Malibu road, which runs along the coast,

3073 or is already served by the road from Charlie Decker's house northward to the Matthew (?) Lake.

'Mr. Decker: I mean the land that could be farmed from Los Flores Canyon to the end of the ranch, and back of that even.

'——: I will tell you how much a man can farm on an average of his 160 acres. A man don't need to have level ground to farm it. I
3074 am farming pretty steep ground, and a man can farm more than one-third of his 160 acres. The soil is there, good soil, and it don't have to be level, and I can farm more than one-third of mine. Of course I can't drive all over it in an automobile and look at it, like the Rindge estate. And they can all farm from one to two-thirds of it, and I bet Mr. Decker can farm of their 1200 acres, or what they have, can farm one-half of it.

3075 'Mr. Hamilton: How much of this land in question is served or can be served from this other road?

'——: The Decker road? Just a very little. Mr. Decker is here, and Mr. Kepler, and the other Deckers, and the Kincaids get to it, but I have seen them with four horses and they don't get over 600 pounds over it, and if a man can't pull over 500 pounds in and out with four horses, they can do very little farming. I think they ought to have a road they can

haul stuff out on. I have only been staying there steady three years, and it costs money to get stuff in and out. You ask the attorneys there if it is not good soil. If it is not I don't think Mrs. Rindge would keep it. I can farm half of my place.

'Mr. Hamilton: How much will the condition of that property be improved as to getting out if the right of way is acquired and no further expenditure made? How much better off will you be?

'——: I will tell you. Of course, they have dynamited the road and blew it up, probably would have to be repaired, but I have hauled 1000 pounds in there with a single team, and I don't know but I think we could all travel it if it was in as good condition as it was.

'Mr. Delorey: When you bought your land, located up there, there was not a question of this road being closed, was there?

'——: They never stopped me.

'Mr. Delorey: Would you have bought your ranch if you had thought this road would be closed?

'——: No, I would not. I stopped at Mrs. Rindge's house when I was building and they never said anything to me.

'Mr. Newby: This coast road was under injunction from 1905 to a few months ago. Mrs.

3079 Rindge was forbidden by injunction to close the road.

'Mr. Hamilton: We think that was an unjust decision.

'Mr. Scotton: Mr. Hamilton, I doubt if you ever read the record in that case.

'Mr. Hamilton: I read a considerable part of the pamphlet.

'Mrs. Rindge: Mr. Hamilton, may I say a
3080 word? I am the owner of the Malibu Ranch, and these people are living between me and the state highway. There is a natural road which almost all these settlers that are in there could use, from the state highway up through to Decker's, from the Crags Country Club, which is closed up, and none of the supervisors have been brave enough to open it up through there because they might lose a few votes, and that road has been closed up. There was a road that
3081 led out a lot of these settlers. Then the Deckers went in, and Mr. Rindge bought out all those persons except Mr. Decker. Mr. Rindge paid them too much, that is why they are there again. Then they go and get another piece. Then Mr. Rindge when he was $7500 Mr. Decker was at $10,000; and Mr. Rindge $10,000, Mr. Decker $12,500. When Mr. Rindge got to $12,500, Mr. Decker was up to $17,500, and that was where it ended. Now if Mr. Rindge had bought out the Deckers and left all the other people there

3082 he would have been better off today, because the other people were not against me all the time. They were simply against the Harris people. * * * Now these people are going up there with the purpose of holding us up. One man up there was a saloon man. He would take saloon men up there. He would hold us up for $5,000. Mr. Rindge would not pay it. Finally one man got delirium tremens and finally he dropped dead. Mr. Rindge then bought him
3083 out. Then Mr. Rindge went and bought a man out by the name of Leeds in Malibu Canyon. Then my husband died. We would not let him in there; he finally got in there; then he fell out in his head, then I bought his estate to get him out. We have been held up all along the line by those peopie in there charging us big prices, coming down on our land, living off us, taking our beans, hay and cattle. Just a short
3084 time ago 250 head of our cattle went from the April rodeo to the September rodeo. Our pigs go off 40 at a time, 200 at a time, just disappear, nobody knows where they go. We caught one man stopping one and cutting his throat, in Ramirez Canyon. We had him arrested for that, and the justice of the peace said the pig must have committed sucide, and we never got anything. Now, we have dealt with those people all along the line like that. When that injunction was brought they were not con-

3085 tent with the injunction, they wanted to put me in jail,—Mr. Haas and Mr. Duncan—under the fencing act, because we put fencing there to keep our stock from getting out and their stock out. They had the Federal Government someway,—I could not tell you just how,—then they were going to put me in jail for putting fences there. Then they brought an injunction making me throw open my gates. The amount of stuff they took, why, it has kept all those people;
3086 they don't have any visible means of support. Now they don't live there; only about ten people live in those mountains. Most of them live in Santa Monica. Mrs. Kepler lived in Santa Monica until about the last year. When we closed the gates they went in, only occasionally they would drive up there. Kincaids never lived up there only a short time. They have about 200 acres. Carl Haas has about 80 acres. Why
3087 should we give roads to these people when they live between us and the state highway? There is a natural way. I think Mr. Hill has property up there,—

'Mr. Hill: I have not even a hill up there.

'Mrs. Rindge: There was a great big boat coming along, we were sitting on the beach, there was a big boat and it was loaded with logs or rocks. When it got in front of —— Canyon we thought it was a big barge loaded down very low to the ground. We looked at

3088 it and we said, "It is a well-shaped boat"; it anchored in front of —— Canyon; it saw us and they drifted on. It was the day of the earthquake,—and went up around the point. I had a lady friend with me and we went around the point there and we saw a big boat coming this way. I said, "there is a big boat pretty close in." We paid no attention to it; we went to our machines on the bluff, then we had them
3089 put under the trees. Very soon this boat put out to sea, and it flashed nine times, and we said, "that's strange," I said "smugglers," and they said they guessed it was smugglers. It went around and came back right close in front of —— Canyon. Pretty soon we were ready to go home, and it blew two blasts. * * * Now, that, I am sure, was full of ammunition, to be loaded onto that boat. My lady friend says, "Let's report that." I said, "No, I have
3090 reported it hundreds of times and nothing ever comes of it." And she said, "I am going to report it," and she finally did, and a man said he was going to report it to the bureau of information, but it never was reported. Now that is very strange. I don't know what it can be. About the smuggling on the ranch, there is not half the smuggling that we used to have. All of it goes on at night. Our men don't allow them on the ranch. We have so much stealing; only last week a sack of seed beans

3091 was stolen from the field. I told him when he went up there our beans would be taken right off the field. Those settlers don't have any visible means of support; they have to live somewhere. Now that is the thing we have been under. Is there any man in this audience that would stand for a thing like that? Is there any man here that would allow their products to be rustled and taken off, and all that stuff to be
3092 utilized by people too lazy to work; they go up there to load, people that are just too lazy to work. If they wanted to work they could build roads to these other roads.

'Mrs. Mason: Mr. Chairman, may I answer a few of those points? All over Southern California there are enormous ranches, some of them comprising many thousands of acres,—more than the Rindge Rancho—and I don't think it has come before our county officials' attention
3093 that there have been so many depredations committed upon these other ranches. I don't recall one ranch that ever reported and there has been published in the papers the cattle poisoned and the grain stolen at the Rindge Ranch. Why is it the Rindge Ranch is so particularly afflicted in this matter? I think if they give a little introspection they might get some light on these things. Everyone loses more or less on a ranch, one way or another. Fires have been set that very frequently get out of bounds and unable

3094 to be controlled and more ranches than the Rindge Ranch have suffered in that way. As far as the cattle being poisoned is concerned, some time last summer The Times published quite an incendiary article, that sheep had been poisoned, and if I am not mistaken it was frankly mentioned that the settlers were poisoning the sheep on the Rindge Ranch. The county officials took that up and sent out the veterinarian to make an investigation and his report
3095 was that the cattle had died from anthrax. I suppose the ranchers went down there and inoculated them with anthrax.

'Mrs. Rindge: They certainly did.

'Mrs. Mason: So far as these boats out to sea with their suspicious actions, as I said before, these ranchers having no access over your ranch, gates being erected and guards placed, they have no means of doing any of this smug-
3096 gling or crooked work that is insinuated, so someone on your ranch must be responsible.

'Mrs. Rindge: They come from the hills.

'Mrs. Mason: All the more reason why this road should be opened and access given to anybody and everybody, and it would do away with that. Give the officials an opportunity to go back and forth up there. Years ago the Government wanted to erect a lighthouse on that point, and Mr. Rindge demanded of the Government a sum exceeding the purchase price of the ranch,

3097 and the Government was unable to put the lighthouse there for that reason. Is that patriotism?

'Mrs. Rindge: I say it is a lie.

'Mr. Guernsey: That is not a material thing at this time.

'Mr. Hamilton: I think these personal allusions probably do not help any in reaching the conclusion.

'Mrs. Mason: Probably not, Mr. Chairman;
3098 I apologize. However, it was the accusation of persons poisoning the sheep, which was enough to arouse—

'Mr. Guernsey: That was blamed on the Germans.

'Mr. Newby: We are not charging the settlers with any depredations at all.

'Mr. Anderson: It is unfortunate, of course, that personalities should be injected in this matter. That ought to be omitted absolutely.
3099 I know that this board is desirous of doing what is right in this matter, and you have sought to ascertain data upon which to base your judgment. I am not here to undertake to say how much tillable land there is in these mountains back of the Malibu Ranch. I have been all over them, but I do not know the statements that have been made here are gross exaggeration, and it seems to me that if this board does intend to pass upon this matter intelligently, that you should get more definite information through

3100 your own means or means at your disposal as to these pertinent questions that you have asked here, which tend to throw light upon the importance of this road as a war measure. Now, the main case in which most of them are interested, that is, the longer road, is not set for trial yet. The cross road from the beach to —— is set for trial, but the road which would have to be provided and built in order to use this other
3101 road is not even set for trial yet. Therefore I am satisfied that neither the interest of these people back of the ranch would suffer nor anywhere else if this board would take the time which is necessary to inform themselves as to the amount of land which is under cultivation or which can be cultivated within a reasonable time in these mountains back of the ranch. I would suggest before you act in this matter that you inform yourselves by sending out men
3102 who are qualified to pass upon it and look into the matter. Then I am satisfied that you will find that matters have been greatly exaggerated. As a matter of fact the main road along the ocean will not give access to any of this mountain land except that which is tapped by the existing Decker road and the new one proposed to be built. For 16 miles there through the ranch there is no connecting road. You have to go through the ranch to get to the mountains behind it. This district in which the so-called

3103 Decker property is situated is already fed by an imperfect road, it is true, from the north, but which could be improved if even a one-hundredth part of the money that has been spent in this useless litigation had been used for that purpose. So I suggest that this board, before passing upon this inform itself, not from *ex-parte* statements from myself, from settlers or from Mrs. Rindge or any one else, but on this
3104 important matter which is material to this question, which is, is this road of such importance as a war measure that it should be built now? Mr. Hamilton stated that the decisions in the three or four cases which have been tried were unjust decisions. I think you should not have made that statement, because I am satisfied you cannot have read anything like the record in those cases, because they occupy a great many thousands of pages, and the little pamphlet
3105 which Mr. Dodge handed up is an *ex-parte* statement gotten out by the man interested on the other side, and does not contain the truth of all cases.

'Mr. Hamilton: The book I alluded to was, I am quite sure, distributed by the Rindge interests.

'Mr. Anderson: We will say, then, it is the decision of the judges, but that decision was based upon the evidence in the case. Can anyone pass upon that unless he has read the evi-

dence? One case was tried before Judge Bean, who sat in the Federal Court in the Northern District, and after months of testimony was taken and four weeks of argument he held that the settlers in there could build roads easily to the north, and they were not entitled to a road across the ranch as of necessity. The main case which was brought by this county and which went to the Supreme Court of this state was reversed, not on questions of law, but because the seven judges who heard that case and read the testimony decided that the evidence did not show that there was ever any public road there. Neither Mr. Hamilton nor anyone else, until he has read the testimony should say those decisions are unjust.

'Mr. Hill: Mr. Chairman, counsel has gone to some length and taken up the matter of the letter that I wrote to the Chamber of Commerce. I might state, gentlemen, that that is the way we do things here. We do them right open and above board. We are glad to have the public look at them. We don't have to hire anyone to circulate any petitions to put in for us. It is really a refreshing circumstance to see the Rindge interests come before this board of supervisors with the Stars and Stripes wrapped about them, in which they enthuse with patriotism. It is a remarkable lapse of memory that that did not occur during the time a military

road was desired up there, at the time that the state of California wished to get a paved road; and as the lady very aptly said, neither did that occur at the time the United States Government wanted a lighthouse on the Rindge Ranch. This is a sort of latent patriotism that has just come to life. The fact of the case is that patriotism is the vehicle on which they are trying to ride to selfish motives. Speaking of conservation of property and moneys, certainly we should conserve. I subscribe to everything my friend Mr. Newby says. Every one of us must do this. We must all get in and help the war, but I want to tell you, the amount of money to get a right of way in there, to put a road in to allow these products to come out, will in one year's time more than pay for the money that will be spent, and those products can be used for this Government in a patriotic manner and we will have a road up that coast. Now my friend Mr. Newby referred to the consideration of the Capital Issues Committee. I think through a misstatement he referred to an Act of Congress. There is not any Act of Congress on that matter. It is simply a commission that was appointed in Washington. We have been through that matter here in the flood control matter, and they don't touch on any matters less than $100,000. Mr. Sartori called me up half

an hour ago. I suppose you have been to see him to have him working on this matter.

'Mr. Newby: I did not.

'Mr. Hill: Some one had evidently seen him because he called me up, and I explained to him what the situation was. Now, you refer to Mr. McClellan being with us on this thing. Mr. McClellan has been with the people on this thing without any question. He wants to do what the people want, and as far as I am concerned on this thing, I want to do what the people want up there. Counsel referred—and it was really an amusing thing—to a Biblical figure of speech in which Mr. McClellan was likened to a Salome. That might be good, but I can't conceive of the Rindge interests occuying a like position as John Baptist. Now, Mr. Anderson referred to the matter of the case not being set for trial. It is a fact, and you will agree with me, we have given you time on that and your office has promised to have an answer in for several weeks.

'Mr. Anderson: I only referred to that as a reason why this board could take the time.

'Mr. Hill: I might state that they have done that. Mr. McClellan has been over that place. Now, only a word more. A great deal has been said about patriotism, about our country, and about the cruel war over there. I look at this thing that every man who owns property—I be-

lieve in the right of property, but I believe in that right of property first to the extent of taking care of your family, and when an all-wise Providence has been kind enough to you to give you more than you need, you hold it in trust for the benefit of humanity, and this war is being fought right along the lines that there will be no longer an imperial imperium in any community. The rights of all humanity are disregarded in the Central Empires. I don't know of any rights that are regarded on the Rindge Ranch. And so far as I am concerned in this matter, these people behind the Rindge Ranch who are trying to make a living—I have been up there, they are not lazy; they don't live, as Mrs. Rindge says, they exist, and the reason they don't live instead of exist is because they can't get in through the Rindge Ranch, and I for one want to do everything I can to open up that country, to make it a decent place to live in.

'Mr. F. L. Haskell: I want to say a word. I am simply a man that is poor, I am not to be compared with Mrs. Rindge and the rest of them, but I am an American citizen. I have got a son that has gone to fight for patriotism that you folks are trying to bring up here. I did not try to get him out because he was married, or get exemption for him on any grounds. And I think if the supervisors want to see how many acres of land up there are

under cultivation ought also to consider how many acres of grazing land there is. I went up to that ranch, the first time I ever went up there was 12 years ago. I had no trouble in getting over the road. Only, since, some parts of the beach were washed out. When I moved up there I had a four-horse load of furniture, and I got up to within a quarter of a mile of my camp, and I had to take the beach because there was a piece of road washed out, but there was Mrs. Rindge's road open, and I was refused to go over it with my team. I got stuck in the sand. There was 27 heads of mules standing within 300 yards of me, with the harness on and eating hay. I went to Fred Rindge himself and asked for a team or two to move me three or four hundred feet on to the beach. No, sir, nothing doing. "I am sorry for you," he says, "I would like to do it myself, but it is against mother's wishes." As I say, I am an American citizen, and there is land open to entry in the United States which every American citizen has a right to take out. I have tried every way possible to be peaceable up there and cause no trouble at all. Now there has been this brought up about killing stock and all this and that. In all the times that my folkes and I have been up there I have never seen anything of the kind. The only thing I ever saw done was when my son went to one of the riders and

3121 says, "There is a calf laying up in the canyon that has just died." He took the Rindge rider up there and showed him the calf. He went straight to the Rindge people. I had ten head of cows when I started up there and I raised some twelve or more calves. I had to get rid of the whole outfit because you don't try to fix any fence. Yes, mine get down on your place, I will admit, but to one of my cattle getting
3122 down on your ranch, there are 110 of yours get on mine. I have the Rindge riders to prove that.

'Mr. Guernsey: How many acres have you? 'A. 160.

'Q. How many under cultivation? 'A. Not over five.

'Q. How long have you lived there? 'A. Three years.

'Q. How much is possible to cultivate? 'A.
3123 I really don't know; I suppose I could cultivate nearly half of it.

'Mr. Guernsey: Just a word, Mr. Chairman. We have heard a great deal of dying calf stuff here today, sob stories about it, and we have heard about the Kaiser of Germany and about the Imperial Kaiserin up on the Rindge Ranch, but you have a case before you submitted by two sides, and there are two sides to this story. I see Mrs. Rindge's side very clearly and I see the other, and for one moment I will take you up

3124 to the Cornell district where there are many settlers. They live there; they have a pretty little school house. They want a means of ingress and egress. They want a road. If you build this road for six people, four of them living in Ventura county, two of them in Los Angeles county, with a total cultivation of 205 acres; if you want to spend a quarter million on a road of that character at this time, then I
3125 leave it to the board of supervisors to do it at your peril so far as the voters of this county are concerned. I don't think that you will do it. It sounds fine; it is high sounding, to have four or five splendid Americans come in here, and I take off my hat to these fine settlers, and I take off my hat to Mrs. Rindge, not because she has more cattle than they have, I know her troubles and her responsibilities and her cares and her depredations; and Mr. McClellan when
3126 he ran for supervisor, I understand he made a pledge to put that road through—

'Mr. McClellan: Mr. Guernsey, who did you understand that from?

'Mr. Guernsey: I understand it from several.

'Mr. McClellan: It is a lie.

'Mr. Guernsey: That was merely an understanding; I said that was my understanding.

'Mr. McClellan: You be sure of your information.

'Mr. Guernsey: No insinuations were in-

3127 tended. I understand from Mr. Hill's letter that you are with them to the finish.

'Mr. McClellan: Yes, and I am.

'Mr. Guernsey: And Mr. Hill, the county counsel of this county, writing letters to the Chamber of Commerce and similar organizations asking them to send large representations to this meeting. What for? Do they own land up there? I have not heard a word from the
3128 president of the Santa Monica Chamber of Commerce. Why does not Mr. Charles E. Haas, a friend of mine, by the way, who prosecuted this case for months in the county counsel's office, who owns 80 acres and who will be greatly benefited by the road? I say it in the most kind fashion. What about Mr. Manley? Not even a goat.

'Mr. Manley: I can't get one in there, that is the reason.

3129 'Mr. Guernsey: There are all sorts of poor people in this county today living in ravines and canyons that haven't a boulevard. Take a man like Fremlin, ranchers who are developing their property up there and live there. They want a road, too. No one has mentioned their name. Why not build a road for them? If you want a direct route from Ventura to Santa Monica, we will give you a route without one cent.

'Mr. McClellan: Yes, how much will it cost to build it?

3130 'Mr. Guernsey: It will cost a whole lot less than the other.

'Mr. McClellan: I have been thoroughly over it and I know what I am talking about.

'Mr. Guernsey: I have; I will ask the rest of the board if they have.

'Mr. Dodge: I have not. Why isn't there some one here to plead for the Cornell district?

'Mr. Hill: Why didn't the attorney come whom you asked to come?

3131 'Mr. Guernsey: I never did.

'Mr. Hill: Some one asked that they be represented here by an attorney.

'Mr. Scotten: I can say in answer to that that no representative from the Rindge people has asked any attorney to come here.

'Mr. Hill: Who asked Mr. Allen to come up here and assist the Rindges?

Mr. Scotten: I don't know.

3132 Mr. Newby: You have inside information, it seems.

'Mr. Guernsey: I would like to hear from Mr. Middlecoff, one of the Santa Monica Chamber of Commerce, who owns property up there. He does not live there; settled there for business purposes only. Now, there is a profiteering side of this case too. You must look at that. There are men up there, county officials and others, who hold property in that district, and why did they go there?

3133 'Mr. Hill: What county official owns property up there?

'Mr. Guernsey: Sheriff Cline owns property up there. In regard to Mr. Haas, I don't want to speak unkindly, but it was unwise for the county counsel, in my opinion, to place a man in charge of the prosecution of this case, a man who owned property on that road. I say that in the kindliest spirit to Mr. Haas.

3134 'Mr. Haas: Mr. Chairman, I want to state in reply to Mr. Guernsey that I have a half interest in 80 acres in that country that I acquired long before I went to work for this county; that I am not in charge of the Malibu Road Case; that I did go to work and draw up that complaint as a deputy in the county counsel's office. That is as far as I have been connected with the Malibu Road Case. Now, if that is any sin I will leave it to my Creator.

3135 'Mr. Guernsey: Gentlemen, in conclusion I will say this, that I want you to understand that Mrs. Rindge feels, and has a heart, the same as any of the board of supervisors, the same as Mr. Fitzpatrick. She is a good woman, a fine woman. She has her faults the same as we all have, and I am not here pleading for her at all, but I am pleading for the ranchers in the Cornell district. Those settlers are just as wholesome and splendid and patriotic as the four or five settlers we have had along the

3136 Malibu coast, and I will leave it to you gentlemen to find out the men that will be most benefited by the road; whether the Triunfo road, 17½ miles shorter, a wonderful scenic highway through a most densely populated district, serving four or five, twenty-five times as many people living there on their ranches; why not think of them just as much and as well as the few up here in Ventura county?

3137 'Mr. Nettleship: I am here representing the Chamber of Commerce. I would have spoken before, but things proceeded so rapidly it was impossible. The hand is at last shown. Mr. Guernsey here started out—or, rather, his associate, saying it was a war measure, but finally he forgot the point they were making and he says, why not give the Cornell people a road? You see it is out. The Rindge people don't want a road through their place; they don't care

3138 if the county builds a road, so long as it is not through the Malibu Ranch. He speaks about profiteers. What a wonderful thing patriotism is. It helps the profiteer in food supplies, it * * *; and helps people close up their property that don't want people to go through. In regard to the attempt to compromise Mr. McClellan, that is ridiculous. What does the attorney think we voted for Mr. McClellan for unless it was to do what we wanted? That is what every supervisor is elected for. Of course

3139 he will do what we want, because that is what every supervisor wants, the best for the whole country. That is why we put this thing through. The plaintiff's attorney says this is a quasi-court affair, and he had no right to state his opinion. It is a court inasmuch as we are sitting here in * * * but they had decided to put this road through; they had definitely stated which side they were on. And so far as putting this in a
3140 letter, that has nothing to do with it at all. They ask us to set it aside because it is not a war measure. That is good now. If we do set it aside, when the war is over and peace comes they will say, Oh, fighting is over, let's put it down because it is a peace measure. They state it is not a military necessity. There are a lot of things if we had done them from a military necessity standpoint we would be better off than we are today. If the German fleet should get
3141 out here, if there was any place on the coast they would choose to land it would be the Malibu Ranch, because they would be at home there. It is a wonderful thing to me that the ranchers up there have stood it as long as they have. If I had had to undergo half the hardships—children going without medicine, packing all they have for miles, working for years and finally having to give up the place because of some selfish interest on the part of one person. It is a wonder to me some of the people are alive.

3142 Mr. Guernsey stated here he would challange you supervisors to do it at your peril. What he insinuated was public opinion. I don't know but you would be doing it at your physical peril, with the work that has gone on. I think you might, if you do put this thing through, be in danger of your own lives. The Government is asking for every inch of ground to be cultivated and to be used to its best advantage. I am a four-minute man, and we devote a week to plant-
3143 ing war gardens. There are 15,000 four-minute men and we are asked to give a week's time. The Government thinks it of sufficient importance to cultivate the back lots; isn't several thousand acres of sufficient importance to set aside one selfish person's interest? We ask you gentlemen to do it now.

'Mr. Newby: Mr. Chairman, just a word in conclusion, from the side of the petitioner, and
3144 I want to compliment Mr. Nettleship for his very able presentation of the other side. I knew he was a four-minute man, and we are all in the same class so far as the organization is concerned; our method of presentation is different. As to military necessity, I submit that neither Mr. Hill, Mr. Nettleship nor Mr. Newby nor Mr. Guernsey are competent to pass on that question. I give you this challange; if it is a military necessity I am willing to submit it to the military department of the Government to

3145 pass on it. So much for that. I can say if the War Department will say this road is a military necessity, there will be no further difficulty from the Rindge interests with reference to building this road. Let's put it up to them. They are qualified to speak on that question. I am not much of a military man, certainly no Napoleon, but it is inconceivable to me that that road, built in that place, would be any kind of a military necessity, but if it is and the War
3146 Department says so, we are willing to accept this conclusion. Mr. Nettleship suggests that after the war is over then we will object because it is a time of peace. Sufficient for the day is the evil thereof. When we get to that bridge it is time to cross it. He has no right to assume we are not in good faith in presenting this question. Because we call the attention of this board to a matter that has been in the public
3147 press to such an extent that public officials have said that they will not undertake any of these improvements without consulting the Federal Government, then you cannot say with any degree of good faith that we are not exercising our rights in calling it to the attention of this board in this manner before you spend any money. If we have any legitimate argument in time of peace, then I dare say that will be presented to a different court, because if the board of supervisors are then of the same mind it

3148 will doubtl[illegible] have to go to the courts to be ultimately decided. Now, with reference to the Malibu Ranch, the Germans being at home there, that is simply an oratorical flush, and I want to compliment Mr. Nettleship for the very —ability of making a point without any foundation. He has not yet been able to show that the Rindge interests are in communication with the Kaiser, or in sympathy with his autocratic rule.

3149 The court has vindicated Mrs. Rindge after weeks of testimony and after thousands of dollars had been expended, and notwithstanding the decision of the lower court to the effect that certain portions of the road was a public road, yet the higher court * * * reversed it on the ground that there was no conflict in the evidence. Therefore you as a legislative department of the state of California must assume that the highest court in the state must have

3150 known something about what they were doing when they passed upon that question and decided she was right. In other words, it is easy to have the Bolsheviki spirit that is ruling Russia now. * * * I say, believing as I do in the rights of individuals, that it is carrying that principle to a ridiculous extent, and our democratic principles mean the greatest good to the greatest number; this does not require that at this particular time the road should be built even though there were 100 persons up there who

might be deprived of access to a market, if in order to do that it would require the expenditure of more money than all the crops would amount to. Now, in conclusion, Santa Monica, —talk about selfish interests and profiteering; is it purely altruistic that our friends from Santa Monica are here? In the first place, the organization of the chamber of commerce was for the purpose of development along commercial lines, no altruistic motive at the back of it. There is no criticism on them for that, but the very fundamental, bed-rock principle of the chamber of commerce is for the development of commerce, and the chamber of commerce is here because they believe that by opening this road it will possibly add to the welfare of Santa Monica from a commercial standpoint. I have no objection to that, but certainly they can't say that there is anything but a selfish motive at the back of their opposition. So even assuming Santa Monica is on the same basis as the Rindges, and that the Rindges for purely selfish motives are asking you to abandon these proceedings until after the war, then we are on the same basis as the chamber of commerce of Santa Monica, for surely they will not suggest to this board there is any altruistic motive at the back of their presence here today. Now, of course, as to the question of grades and all that, I am not going into it. I went over that

road, and I tell you that it is a difficult engineering proposition, and I am informed that the grade of the Decker road will be even steeper than the Mt. Wilson road, and if you make it possible to do what these gentlemen and ladies, for whom I have the most profound respect, want to do, make it possible for them to carry their material and supplies in and their products out, if they are going to do that it will require money to do it, for a great portion of the time we had to walk, and even the good riders had some difficulty in staying on horseback in going over a portion of that road. Now, a theoretical road, a mere right of way, won't help that situation a bit. It will require real dollars, cold dollars, in order to build that road. In conclusion I want to say I regret there have been any personalities indulged in here today. There is an absolutely true principle involved here and let's forget for a moment the personalities that have been indulged in. I am assuming from the mere fact of the filing of this petition that we are going to have what we are here for, a fair and impartial decision upon the situation as it is now presented, and not as it was two years ago. My reference to the letter of my friend here was simply accounting for the large number here today, and no reflection of Mr. McClellan, as I indicated in my opening remarks, and by the mere fact of our being here

3157 and so earnestly presenting the matter, we are here in good faith. You have legislative discretion which you have a right to exercise in the light of the changed situation as it now appears. Assuming for the purpose of argument that you are thoroughly convinced that in peace time this road ought to go through for the benefit of these persons, for whom I have a great deal of sympathy from their moving tales told here if
3158 we did not know something about all the facts, I say leave that aside, because in war time the things we do in peace time are not considered. * * * Therefore I say that anybody that approaches this discussion from the standpoint of what is proper in peace time has missed the whole program, and nothing presented here today has shown there is any justification for this board going against the established policy of the Government that all our forces should
3159 be mobilized in order to win the war, and when peace time shall come,—and God grant it may be soon,—then we will meet this proposition on the law and not talk about patriotism. I know it is possible to say we are trying to accomplish a selfish purpose under the guise of patriotism, but I say we would be unpatriotic if before you took the step of spending a million dollars we did not call your attention to the fact. * * * And, gentlemen, let me say, don't forget the whole proposition, the greatest good to the

3160 greatest number. Here are a number who have personal interests. Say that we have personal interest, put us on the same place; they are seeking their selfish interests, we are seeking our selfish interest; put us on the same basis, but remember that before these two contending selfish forces there are a million of our people in Los Angeles county and 110 million people in the United States of America who have rights
3161 here, and there is a principle involved that affects them all, because if the board of supervisors of Los Angeles county will grant this one, the board of supervisors of San Francisco will grant another, Wisconsin another, and New York another, and in the aggregate billions of dollars will be expended and turned into private channels that ought to be turned into channels to beat the Kaiser.

'——: Gentlemen, just a second. My wife
3162 was post-mistress at Yerba Buena district and she got letters from the Government. I have not those letters, but if necessary we could probably produce them to boost for the coast road. I believe we could get those letters. There was a boy next to us got his hand shot off. They had to carry him on horseback to get medicine and the doctor. That is a fact; I can prove it, and I believe we can produce those letters if it is necessary from the Government.

'Mayor Berkeley: I did not come intending to make a speech, but Mr. McLucas, our attorney, is here.

'Mr. McLucas: I have not had anything to say heretofore this afternoon, not because I did not have a cause to speak for, but because there was a greater cause being presented here to this board. I can't make a speech as forcibly and eloquent on this subject as any one of these men and women and settlers made here this afternoon. They can plead their cause more eloquently than anyone else, but I do come here today to represent the citizens of Santa Monica and the chamber of commerce and city council, commissioners of Santa Monica, and come here, not at the request of Mr. Hill, not at the instigation of any county officials. I come here because the citizens of Santa Monica have been watching this contest for a road for years and because they expect their accredited representatives to come here and speak for that road, and I myself wrote a letter to Mr. Hill three or four months ago inquiring as to the progress of this condemnation suit. I wrote at the request of citizens of Santa Monica, so this is not a sentiment worked up in Santa Monica by Mr. Hill or by any county official, but it is a sentiment that comes from the hearts of all the people of that community. Now, this is not a narrow question; it is not a question that confines itself

to the interest of those few persons, however important that might be; it is a question that concerns every citizen of Ocean Park, Venice, Sawtelle, all the bay cities and I believe of the state of California itself. This question of a road along the coast is a question that has long been debated. It is a road that is needed by all the people of this county and of this state. Why, the very town of Santa Monica itself was built with a road all up and down that coast, and we thought then we had the road, and people went into that community and settled there. We did not know we were bound around by a chain of mountains, without any road through there. We thought we had a road on the coast, but finally the courts decided there was no road. Now we find ourselves confronted with that situation. Santa Monica Bay surrounded on all sides by a chain of mountains. There is no means of ingress or egress from the north or the south. If a community ever needed roads, if a community ever was entitled to come before this body and ask for additional roads to the north and the south, it certainly is Santa Monica Bay. From every standpoint, from the interest of the people of that community, of Los Angeles county, from a military necessity, a road is necessary from Long Beach, through Redondo and along Santa Monica up through the Malibu and on to the north toward Santa Barbara.

3169 Now mention has been made here of the fact today that people hold property under a sacred trust. I am not here today to criticise anybody. I am not here to criticise anybody's attitude toward patriotism. I believe in patriotism; so do you. But the Rindge people are opposed to a road; they have been opposed to it for twenty-five years. They have been fighting; they will continue to fight it. Why don't they go into
3170 the courts and fight it and win or lose instead of coming here today. It is not necessary for anybody here to base it on patriotism. Every individual holds property on trust, and no individual has the right to shut out any community from roads to the north and south. The people of Santa Monica Bay have a right to a road along the coast and to the north. I have lived in the West all my life. I have seen roads opened up through large estates. I have seen these big
3171 ranches and I have seen it necessary to open roads through them. Of course, they could come in on any large ranch and say there are only two or three people that need this road. That is true until you open up the road. When we put a road through the Rindge Ranch and open those mountains you will see that country developed; you will see the Rindge estate itself developed farther than it ever has been, and I verily believe that with the opening of that road and the development of that country that

3172 everybody, including the Rindges, will be benefited, and I want to press upon this board today the fact that this is not an appeal that is made here alone by these settlers, however important their interest is, but it is an appeal made by all the people of Santa Monica Bay. They are all looking to your action here today. They expect you to represent them and the wishes of the people, to do the greatest good to the greatest
3173 number, and open this road. Give these people access through there, and you and I and all of us know that the amount of money that you spend on that road during this war will have no effect one way or the other upon the war. Let us build the good roads, let us keep up the necessary things; let us fight together to win the war.

'Mr. Chas. E. Haas: I have just a few words to say, and I don't intend to go off into floods
3174 of oratory, but I am going to ask Mrs. Rindge whether after hearing all these talks this afternoon, she does not feel that she wants to deed to the county this road for patriotic purposes.

'Mrs. Rindge: That is ridiculous.

'Mr. Haas: If not, there is one more thing I want to say, Mr. Chairman. There seems to be some mis-judgment, some light that has not been thrown upon these Supreme Court decisions. I have gone over volumes and volumes of transcript in these cases, and I saw not one

word from the Supreme Court in regard to the necessity of the Malibu road. They were not called upon to decide upon the necessity of the Malibu road. They were called upon to decide whether or not under the laws of the state of California, the Malibu road had ever been properly dedicated, and they decided it had not. This board is called upon to decide the necessity of the Malibu road; that is the only question before the board. So many statements have been made about the few persons in the Malibu Mountains. I know the Malibu Mountains from beginning to end; they are a part of my life and my heart, and I want to say there is not a more beautiful section of country in the United States than the Malibu Mountains. I was up there these last few weeks and saw the hardship those people were enduring. I saw women behind the plow because their husbands and sons had gone to aid their country. I saw beside the road that could not be carried by wagon any further. I saw places where the wagons had gone over the bank because the roads were not sufficient to carry them. Now, these things should not be tolerated by the people of Los Angeles county. These people should be given an access to these homes. They are a part of your constituency, and it is your duty to see that they are accommodated by a competent road. I want to say there is only one question before

3178 this board of supervisors and that is the question of the present necessity, and I will leave it to this board if they go through those mountains and see those homesteads and those people working under hardship, as to whether or not the Malibu road is not a great necessity.

'Mr. Miller: Mr. Chairman, a year ago this June I appeared before this board for the first time in reference to this road. I appeared before this board when it was not acquainted with
3179 the facts. At that time we listened to the people, as many here then as now, and the hardships that were related then, the facts that were brought home to the knowledge of this board, I want to tell you shocked me, and it shocked Mr. McClellan, because at that time the honorable member of the board did not believe the facts were as they were. I own a little property between the Malibu Ranch and the Graham
3180 (?) Ranch. Two years ago Mr. Elliott, of Oxnard, and one of the supervisors came into my office and said, "What about a right of way over that road?" I said, gentlemen, name your place; here is a right of way to it, and I put it in writing and handed it to him. That is for two miles and a half, and I own every inch of the property between the Rindge Ranch and the Graham (?) Ranch. I simply will give them a right of way, and more than that, if that property is worth anything, in addition to it—Some

3181 men wanted to farm it. I said all right, gentlemen, I pay for the grain to put in there. They raised there in two years 196 sacks of beans. They had to carry them on horseback 80 miles to ——. They had no way to haul them out. When they planted them there was a road over the Rindge Ranch. Now it is impossible, gentlemen, to get to that country in any other way except up the coast. Now they speak about the
3182 number of people there. After this hearing last year I said to Mr. McClellan, "I don't know anything about that situation except what I hear, but if what those people tell me up there is true, I am going to dedicate a portion of my life to those people. I don't want a dollar's worth of pay from those people, but I said I am going to travel through that country and see for myself." I traveled up the coast; I came in through Sycamore Canyon, over the
3183 Broom Ranch. I came down over that country, and I walked it. There is no other way. Then I went up to Decker's place and stayed all night, and they got their settlers together and there was 65 people there. Then you go in a little further and there is two school districts. You go a little further and you have the Sycamore settlement. You have three settlements, gentlemen. There is no question about the number of people there. All you have to do is to go there. I said to Mr. McClellan, you have not

3184 seen all of it, let's go a little further. So Mr. McClellan and I took a horse and rode until midnight, into Ventura county. Now we are not narrow enough to say we are limiting the development of this great country of ours to one little county, because Ventura is so closely connected with this situation that all the people's outlet is directly to Los Angeles county for a market, and to Santa Monica. You can see
3185 how the road is being developed because it is developed and they have a good road without any apparent cost to the Rindge Ranch, but when you get to the Rindge Ranch you have no road all the way through. The day I was there the Rindge riders rode up,—and a nicer set of men never lived,—and I heard those Rindge riders say to those people themselves, "we wish it was so that you people had an outlet to the world," and I want to say to you, those people
3186 and the Rindge riders are personal friends, but they do feel Mrs. Rindge is absolutely standing in the light of civilization and standing in her own light, and standing in the light of progress that should not be tolerated further. Those people have got their property. She has got hers. Those people are not asking this county to take her property for nothing. I agreed with the decisions of the Supreme Court; I agreed with the proposition that if there had never been a dedicated road the county had no legal right to it.

3187 I agreed with her on that point, but when it comes to the point of condemnation steps being taken * * * each one of us and every property owner has a right, by the privilege of living in a great, democratic country, under the right of eminent domain, to compensation for whatever property is taken. And the time is long since past when 21 miles of the only ranch which is an absolute barrier to travel and traffic should
3188 bar the trail of civilization. Is Mrs. Rindge's property so sacred that it should be immune from the eminent domain laws when the condemnation steps are taken and paid for? It seems to me that it comes to an intolerable situation. There those people are—as good people as ever God let live—raising families; their school houses are 7, 8 and 10 miles across the canyon. Their little church and school house are just as dear to them as our palatial structures. It is
3189 not right for civilization to stand and this board to retract its honest efforts, made a year ago when they instructed the county counsel to proceed. Mr. McClellan did not come to that conclusion until after he had spent night after night, and I want to say to you I saw him ride all night through that country and sleep in a little old hovel there, with vermin and bedbugs, in order that he might have an opportunity to see the rights of those people. I know he went from one end of that community to the other,

3190 and you can't tell me he don't know exactly what he is talking about. And when he came back and told this board and voted for the condemnation, and changed his mind by doing so, I admire him for being one of the noblest citizens of Los Angeles county. Because, gentlemen, he went there without prejudice. I went there with a prejudice, but when we came back, I don't care for my little interest of property, if the Government wants it it can have it, if it is
3191 necessary to have every inch of it for a road they can have it. Gentlemen, this talk of patriotism by the Rindge interests is a subterfuge. If they don't want these people to have a road it is selfishness against selfishness. They say we have a right to put our selfishness against these people's selfishness, and Mr. Newby is big enough to concede it. Where are the Rindges losing anything? They are getting
3192 pay for what they give up—40 feet wide by 40 miles—less than 100 acres. Now, there is a road already there. They have a road of their own. Now, they are not developing that road and raising any grain on it. I have gone over every inch of that road, and I want to tell you gentlemen, I can drive from Los Angeles county to Ventura county right on that road with a wagon with three-quarters of a ton of beans, and you don't have to do one dollar's worth of work; but let us assume you are going to

3193 give them a few dollars to make a little country road, not a boulevard, but a little road through there to satisfy their demands. That little community will send more than 20 men into the firing line. Isn't it right and fair—what more patriotic act from you and I than to offer those women and children, those old and infirm, an opportunity to develop those thousands of acres there? It is not only the cultivated land that
3194 must be taken into consideration, there are thousands of acres that can be put into pasture. Give them a right of way there; build the road where you can, and if they say it is going to cost something to take it, there is one way they can save every dollar of cost; agree with the county what it is worth, and the county will take a deed for it. But they say if you don't do anything else we will fight you. That is what they have been doing for 30 years. These blue-blooded
3195 Americans say let them come and fight, but don't come here at the last moment, when they see they are backed up against the wall, and when there is no legal argument left for them, seek the last subterfuge, and that is patriotism. Let them say what their property is worth. Let's pay them, and the whole thing won't come to $10,000 and what is $10,000? All right, if they say they want to cut out legal expenses; if they have spent thousands of dollars; they have changed counsel three times. Gentlemen, I

3196 don't know when they are going to stop, but Los Angeles county is too big, and its citizenship is too great, and its future is too paramount to have all this country absolutely shut off. Men, go just as far as you can now, so you can get as much advance on them as you can. If they go to the Supreme Court let them go, but don't let them draw us in by this subterfuge into a by-path and by-track on the ground of
3197 patriotism and loss of money.

'Mr. C. W. Lyon: Mr. Chairman, and members of the board of supervisors: I won't take up much of your time. I simply want to say to you I represent the trustees of the city of Venice and chamber of commerce there, and say we are heartily in favor, all of us, of the project of putting the road through the Malibu. * * *.

'Mr. McClellan: I move we deny the petition
3198 to discontinue the suit and go on with the condemnation proceedings.

'Mr. Hamilton: Moved and seconded the petition be denied, and the county counsel instructed to proceed with the suit. Are you ready for the question? The clerk will call the roll.

(Roll call: Ayes: Supervisors Delorey, McClellan, Dodge and Hamilton. Noes, none.)"

3199 H. I. COMLY,

recalled.

Direct Examination

By Mr. Burnell:

Q. Calling your attention again to Defendant's Exhibit No. 6, of the United States Geological Survey map now on the blackboard, I will ask you if you can trace the course of the highest point, or the course of the ridge of the Santa
3200 Monica Mountains between the northern boundary of the Malibu Ranch, and the state highway, between the county line and Topanga Canyon.

Mr. Anderson: On that map?

Mr. Burnell: Yes.

A. Yes.

Q. I will ask you to go to the map and with the colored pencil, follow the course of that ridge. A. Yes, sir.

Q. Now, tell us what the course that you
3201 have marked out, what it is on the map. A. I have placed on the map a line over the ridge as shown by the contour lines on the map. The contour lines mean the continuous elevation. They show that every point on the same contour line is of the same elevation. All those contour lines show that, and by that I am enabled by looking at the map to determine the elevation of the ridge.

Q. Now, take the pointer and trace that place so that the jury will understand it and

3202 as you trace it, you might refer to any particular point or points at the elevation, and what the points are, if you are familiar with it. A. Right here at the Ventura county line it commences at an elevation of 2500 feet and goes along that ridge until you reach—

Q. Going to the letter "S" in the words "Santa Monica Mountains"? A. Yes, to a point just southwest of the figures 2076, near the corner of the old Conejo Ranch. Then in
3203 a southwesterly direction following the ridge to a point marked X-10, near the center of section 12, and then in a northeasterly direction to a point near the north line of section 12, following the elevation given as 2039, then in a southeasterly direction passing through the point "A" in "Santa Monica Mountains" and below the bench mark point No. 2419, then generally to the direction on top of the ridges until we
3204 reach bench mark 2173, just west of Mesa Peak; then southerly and easterly across the 1 range line at a point shown by R 18 W; thence continuing in an easterly direction passing through the bench mark to point bench mark elevation 1699, then following up the ridge until we come to Saddle Peak; thence in a generally northerly direction following the various ridges until we reach the bench mark at elevation 2169 at Calabasas Peak; then in a northeasterly direction passing over the word "line" in "San Ber-

3205 nardino Base Line," then still northeasterly passing north of the "A" in the word "Mountain" in "Santa Monica Mountains" to a point at Garapetus Creek at the present location of the Topanga Canyon road, at a point just southwest of the "M" in the word "Mountain" in "Santa Monica Mountains." (Witness marks on map.) It is marked "summit of ridge." (Witness writes name on map.)

Cross-Examination

3206 By Mr. Newby:

I have never surveyed that line, and I placed it simply from the map. It is a fact that on the north as well as the south of this line that I have marked to indicate the crest of the mountains, there are valleys. And this line itself is broken by a valley, in one place, I believe, at the Malibu Creek. That is the only place that has any break in that line, at the
3207 junction of Coal Creek and Malibu. Coal Creek flows into Malibu Creek through that opening. There are peaks and then there are lower places between those peaks on that line. That is true with reference to the entire line, that there are peaks with depressions in between the peaks. The elevation at the Marion Decker house marked on the map as X-11, is about 1000. At Vaughn's place, X-5, 1500. The elevation at the point where the red line which I have just placed on the map intersects the yellow line just

3208 southwest of the letter "S" in the word "Santa" is 1850. The elevation at the northerly line of the Malibu Ranch where it is intersected by Alisos Canyon is about 900 feet. The elevation at X-3 being the Charlie Decker house, is about a thousand or a little over. The correct elevation is 1033. The elevation at the point where the yellow road which we have called the Decker road intersects the black line which represents
3209 the grant line, just southeast of the figures 2706, is 1800 feet. The elevation where the plain yellow line representing the Decker road strikes the Ventura county line, is 1100. The elevation where that same road intersects the Old Conejo road is 900. The elevation where the Old Conejo road intersects the Cornell and Triunfo road is a little less than 900. That is just south of the letter "S" in "Russell." The elevation at Triunfo post-office is about a thou-
3210 sand feet. The elevation at Cornell is about 900. The highest point in that Nigger Hill section is 1900 feet. The elevation at a point where the red line which I have placed on the map intersects the Sierra Canyon road is 1900 feet. The elevation at the Shirley slide, which is about the end in the word "Santa" just north of the red line, north of section 13, is about 1900 feet. The highest elevation from Cornell to the Charlie Decker house is about 1900. The lowest, Cornell, is 800. It is not

3211 a gradual rise from Cornell, which is 800 feet elevation, to the 1900 feet elevation, which is at the Shirley grade. There is a rise until you reach this 1900 foot elevation, which is at the Shirley grade. Between Shirley grade and Charlie Decker's the highest elevation is about 1650 feet. That is a place called Barney's Knob. It is about two miles or a mile and a half southwest of Vaughn's place and is marked
3212 X-9, I believe. Vaughn's is X-5, close to the point marked X-16. That is after you pass Vaughn's and turn south in the direction of Decker's.

Redirect Examination

By Mr. Burnell:

The Witness: The water shed determines the location of the crest of the mountains. In this way, from the summit, as shown here, the water flows to the south on one side and north
3213 on the other, with the exception of Malibu Creek, which is a break through the entire range, the only break between Topanga Canyon and the Ventura line. Malibu Creek flows through a canyon that cuts right through the range. With that exception the water flows either from my red line indicating the crest, to the south toward the Malibu Ranch, or towards the north and the state highway.

Q. Now, I want to ask you to start on the map from the Decker place that bears the

3214 number X-3, the Charlie Decker place, and trace the road from there to Triunfo post-office along the yellow line that has been pointed out as the way by which the people from Charlie Decker's house travel to reach the state highway at Triunfo, stating as you go along the points of elevation, and whether you go up or down to reach those points and the approximate distance between those points.

Mr. Newby: That is from X-3 to Triunfo?

3215 Mr. Burnell: Yes, sir, along the so-called Decker road to Triunfo. A. Leaving the Decker place at X-3, at an elevation of 1033, there is an upgrade for about a mile until we reach an elevation of about 1400. For about half a mile it is an upgrade until we reach an elevation of about 1600 or 1650. That 1600 elevation is about at the point marked 16-X. Then for about a mile it is down grade—both

3216 down and up grade, a rolling country, until you reach Vaughn's place, X-5, at an elevation of about 1500 feet. Then it is an up grade with some small down grade for about a mile and a half until you reach an elevation of 1850 at what is known as Tecumseh Pas near the letter "S" in "Santa Monica Mountains." Down grade until an elevation of about 1800 at the crossing of the El Conejo Ranch line near the point marked 2076. That is about a half a mile. Then it is down grade for about one mile until

3217 we reach an elevation of about 1200 feet at a distance of about a half mile southeast of where the Decker road crosses the county line. At the county line the elevation is about 1100 feet. From the crossing at the county line to the Decker road it is down grade for about three-quarters of a mile until we reach what is known as Little Lake or Dam at an elevation of about 1000 feet; down grade for another
3218 half mile or three-quarters miles until we reach the El Conejo road at an elevation of about 900 feet. Then it is practically level for about a mile or a mile and a quarter until we reach the Russell Ranch buildings at an elevation of less than 900 feet. Then it is up grade slightly for about a mile to Triunfo post-office at an elevation of about 1000 feet.

Q. Now, I will ask you to trace in the same manner the road to Cornell, beginning, if you
3219 please, at the point where the road branches off, the road just described a little bit north of X-5. A. It branches off a little northeast of X-5 and starts on a down grade, starting at an elevation of 1600 feet to the bottom of Trancas Canyon, at an elevation of about 1250 feet. Then it is up grade for a mile, to near the center of section 11 at an elevation of 1900 feet. Then it drops down for about three-quarters of a mile or about a half a mile to a branch of the Zuma Canyon at an elevation of 1700 feet.

3220 Then there is an up grade for about a quarter of a mile to the crossing of the summit at an elevation of 1900 feet, and then for a distance of about three-quarters of a mile through rolling country until it reaches the point near the eastern side of section 12 at an elevation of 1800 feet. Then it drops down for a distance of about a little over a quarter of a mile to the bottom of a branch canyon of Zuma Canyon at
3221 an elevation of 1650 feet. Then it is up grade for about three-quarters of a mile where we cross the summit about the center of section 7 at an elevation of 1900 feet. Then it drops down for a distance of about three-quarters of a mile to the east line of section 7 at an elevation of about 1000 feet. And then for a distance of a little over a mile, to Cornell, it is on a slight down grade until we reach an elevation of about 800 feet at Cornell. Going to Triunfo
3222 from Cornell in a northwesterly direction, for about three-quarters of a mile to the mouth of Love Canyon, at an elevation of 900 feet; then in a northeasterly direction for about three-quarters of a mile—northwesterly direction I mean—along the Triunfo Canyon to the intersection of the southeast line of the El Conejo Ranch at an elevation of about 950 feet—that elevation is a little less than 950 feet—it is nearer 900 feet. Then for about a mile and a half through Triunfo Canyon to the Russell

Ranch buildings. From there on I have described the route before. That elevation is a little less than 900 feet: From the place where I say the road runs from 1800 feet elevation to the elevation at 1650 is a quarter of a mile. That is about a 20 per cent. Where the road drops from an elevation of 1900 feet to an elevation of 1000 feet in about three-quarters of a mile, it would be about 30 per cent. grade. That is at Nigger Hill.

Q. Now, I will ask you to follow the same procedure and trace the course from the same point, Charley Decker's place, along the road shown in yellow to the junction of the proposed Los Alisos Canyon road and down the Los Alisos Canyon road to its junction with the proposed Malibu road near the beach. A. From Charlie Decker's place at X-3, it is a down grade until we cross the Malibu Ranch line at about an elevation of 900 feet or a little less. That distance is about a half a mile. Then it is level, or practically so, for about a quarter of a mile; and then for about a mile and a quarter, it is down grade until we reach an elevation of about 250 or 300 feet; and then for about a quarter of a mile it is down grade until we reach an elevation of about 90 or a hundred feet; and that would be at the point just before we reach the Malibu road at the junction of what is known as the beach road and the Los

3226 Alisos Canyon road. And then on the Los Alisos road is a down grade for about a quarter of a mile—or, it is practically level for about a quarter of a mile.

On the road which I have just traversed from the Decker place, X-3, down through the proposed right of way and the Los Alisos Canyon road to the main Malibu road, the greatest per cent of grade is about 14 per cent. There is about seven or eight hundred feet 14 per cent
3227 grade—a little less than that. I think about six or seven hundred feet.

Q. Now, in taking us over the road that you described as one of the roads—I think it was the road to Cornell that goes across the Trancas Canyon from the Charlie Decker place, you gave us the elevation down at the bottom and then from there down on the other side—I don't remember just the figures. Just give it to us
3228 again. What I want, Mr. Comly, is the elevation at the lowest point in Trancas Canyon that is crossed by the road from the Decker place to Cornell.

Mr. Newby: 1250 feet at the bottom, he has given.

Mr. Burnell: Is that right, Mr. Comly? A. Yes. The elevation at the top was 1900 feet. The road travels from the 1250 foot level to the 1900 foot level in about a mile at about a 12 or 14 per cent grade.

3229 *Recross-Examination*

By Mr. Newby:

The Witness: The percent of the grade on the Los Alisos road from the north line of the Malibu Ranch to the Charlie Decker place, X-3, is about six percent. From the junction of the Malibu road with the Los Alisos road to the north line of the ranch thereis a short piece of 14 per cent commencing at the main Malibu
3230 road and running for a distance of about six or seven hundred feet. It would average about seven or eight per cent. The point at which it connects or intersects the main point at which it connects or intersects the main Malibu road is at an elevation of about eight hundred feet. The elevation at the north grant line is about nine hundred feet, and the distance is a little less than two miles. The survey shows the length of that road to be one and nine-tenths miles.
3231 The Decker house is at an elevation of 1033 feet. The point of the intersection between the Los Alisos road and the Malibu road is at an elevation of about 100 feet. In order to reach the Charlie Decker house at X-3 over the proposed Los Alisos road it would not be necessary in traveling the distance of one and nine-tenths miles to make a rise of 933 feet, because you gave the difference in elevation from the Charlie Decker house to the road. You have to climb 933 feet in going from the junction of the Los

3232 Alisos road to the Malibu road, to the Charlie Decker house. In traveling from the junction of the Malibu and the Los Alisos road to the north end of the grant line you have to make a rise of about 800 feet. The average grade over that distance would be about seven or eight per cent.

Mr. Burnell: Now, there is just one other thing that we neglected. We were acting under
3233 the assumption that it had been done. That is, we desire to offer as exhibits or as an exhibit, the large map that was on the blackboard from which the witnesses on both sides have testified —that is, the copy which is attached to the complaint as Plaintiff's "Exhibit A" with the appropriate letter and number in serial form.

Mr. Anderson: We have no objection to that, it being understood that the objection as to certain legends on the map still stands.

3234 The Court: Remember that, gentlemen. In the early part of the case I directed you as to inscriptions on these maps, that you were not to accept that as proof of the fact.

Mr. Burnell: Your Honor does not by that refer to the designations "beach land," "pasture land" and that kind of statements.

The Court: All the geographical statements or geological statements made by proper authority will be considered.

3235 Mr. Burnell: Yes, I will state to Your Honor that we are not offering the maps for any purpose connected with the descriptions of the land as to pasture or cultivated, and that those are not to be considered as part of our offer. In other words, they are simply there and can not be very well taken off.

(Map admitted is one of the exhibits to be certified up.)

3236 Mr. Vallee: We might at this time, also, if Your Honor please, offer a map of the Los Alisos road.

(Map admitted, marked Plaintiff's "Exhibit E," and is one of the maps to be certified up.)

Mr. Burnell: I think that is all on our side, Your Honor.

F. G. DESSERY,

a witness called on behalf of the defendants in 3237 sur-rebuttal, being first duly sworn, testified as follows:

That he was a civil engineer and had been such since 1900.

Counsel for plaintiff thereupon stipulated Mr. Dessery's general qualifications as a civil engineer.

The witness further testified that he had installed an irrigation system in Zuma Canyon for the Rindge Company, of which the standpipes to be taken by the proposed right of way

3238 for the Main road formed a part; that these standpipes could not be moved to another location without wrecking them entirely; that to properly change the pipe line and standpipes would require the change or removal of about eight hundred feet of pipe line at a cost of from ninety cents to a dollar a foot and the reconstruction of the standpipes at a cost of about $50.00 each; that the change in the pipe line would necessitate an increased fixed charge in
3239 the maintenance and operation of the system, but just how much the witness could not say.

The standpipes affected are three in number.

The witness further testified that the present pipe line, as shown on Defendant's Exhibit No. 19, has curves in it. That it is not the curves as curves that interfere with the operation of the pipe line.

Q. Now, I am going to call your attention
3240 to a diagram which I will draw, and ask you a question about it. I am assuming that the line I am drawing is the pipe. I am not attempting to put it in the general direction, but just indicating the line I have drawn, as the pipe line on the ground. Now, supposing that you have a standpipe on that pipe line. What I want to find out is whether it would not be possible to take the standpipe out of here and move it and put it in another location, we will assume, south of where it is now, and instead

3241 of moving any appreciable amount of the pipe line, to bring an elbow to the box and one from the box to the other side, as I am indicating on this little diagram. Would that be anything impossible or impracticable? A. No, sir, that could be done.

Q. Now, if we assume for the moment that there is no necessity for removing the pipe line itself but that there is for moving the stand-
3242 pipe, and new stand-pipes would be located to connect up with the pipe line in the way that I indicated on the diagram— A. It could be constructed that way, yes.

Q. And that would obviate the expense of moving the pipe line, wouldn't it? A. Providing you, in so doing, did not put excess pressure on the pipe line.

I do not know whether the proposed road would or would not interfere with the pipe line,
3243 other than with the standpipes, as there is not enough detail on the proposed section to answer the proposed question.

Q. Assuming that the standpipes A, B and D have to be moved and that the cost of moving them will be $50 each, or $150 for the movement of the three, and assuming that that can be connected with the pipe line by elbows in the manner that I indicated in the question, in connection with which I drew the little diagram on the board, would you say that the cost of mov-

3244 ing the pipe line would be $800? A. It would not.

Q. What would the cost be under that arrangement? A. Exclusive of the boxes, probably a hundred dollars. Assuming it could be done, that would make the total cost of the changes, including the movement of the boxes, about two hundred and fifty dollars. When I told you it could be done, I qualified that by
3245 saying that if the ground at the location where they were to be moved is such that there would not be depressions in this gravity pipe line that would cause air pockets.

Q. If the ground in its natural elevation is such that it would cause air pockets, wouldn't it be entirely possible to raise it on a structure and keep it at its proper level? A. Yes. That would mean lowering your boxes and making higher boxes and a pipe line could be kept on
3246 a gradient. It is true that you could eliminate these air pockets, by moving the standpipes, and putting elbows on the main line, supporting them by a structure of some sort; by keeping them on a uniform hydraulic grade it could be done. I would have to know all the elements entering into the particular situation of those boxes before I could tell how expensive or how difficult, but it could be done. It is not impossible.

3247 A map of the irrigation system, made by the witness, was put in evidence and marked Defendant's Exhibit 19, and is one of the exhibits to be certified up to the Appellate Court by the clerk pursuant to the stipulation heretofore set out.

H. I. COMLY,

recalled for further cross-examination.

Cross-Examination

3248 By Mr. Anderson:

I assisted in a survey of a road from Los Alisos Canyon to Russell Valley made in the months of February and March, 1917.

Mr. Anderson: Will you gentlemen stipulate, subject to any objection you may have, to the resolution itself, that this survey in question was made pursuant to a resolution of February 1, 1917, found at page 214 of road book 18.

3249 Mr. Burnell Why, yes, but I think that the resolution should be read into the record.

Mr. Anderson: The resolution in question reads as follows—I have already given the date and page. This was February 1st, 1917, and minutes read:

"The board met pursuant to adjournment. Present: Supervisors, J. J. Hamilton, chairman presiding; R. H. Norton, F. E. Woodley, R. F. McClellan and J. S. Dodge.

3250 "*In re* road from Russell Valley to Los Alisos Canyon: Order authorizing survey.

"On motion of Supervisor Woodley, duly seconded and carried, and in accordance with recommendations by the county counsel and the county surveyor it is ordered that the county surveyor be, and is hereby authorized and requested to make surveys necessary for preparation for deed for right of way for a road extending from the Malloy ranch house in Rus-
3251 sell Valley to the house of Charles Decker in Los Alisos Canyon, in Road District No. 5."

By Mr. Anderson: The Meloy ranch house with reference to Meloy Hill is south of it. The survey is from the Meloy ranch house and Russell Valley to the house of Charles Decker. That ranch house is south of what we have been talking of as the Meloy Hill. It is on the Decker side of the Meloy Hill. The profile I
3252 have covers the survey of the Meloy Hill. The document that I have in my hand is the profile of the survey. It extends from a point near the Decker house to the Ventura county line, covers the Meloy Hill section; and that road is approximately along the route that is now traveled that we have been calling the Decker road here. The vertical scale of this map, one inch equals 20 feet, and horizontal scale one inch equals 80 feet. These figures that appear from point to point—for instance the figure

3253 1150, 1200, 1250, and 1300 represent elevation. The elevations of this survey are correctly shown, that is, the elevations at the points over which this survey passes are correctly shown on this map. Those figures represent a space of 50 feet in elevation. This point of proposed road or surveyed road between those points is the actual elevation. The dark comparatively straight line is the profile of the surveyed road. The heavy black line is the center line of the
3254 proposed road, the one up and down. I have cuts and fills indicated on the map. The difference between the pencil line and the heavy black line would show the cuts and fills. In other words, if the road was constructed according to the survey it would be cut down or filled up to a level with the pencil line. That would then be the red line.

Q. I call your attention to the pencil nota-
3255 tions near the figures 1300-1250. That is north, isn't it, I think so; and I will call your attention to this and ask you what the pencil mark 15 per cent. indicates and again the 1.0 per cent. and 11 per cent. What does that indicate? A. Grades. That is the percentage of grades at the proposed line. I believe that is true throughout the map unless there is some there that is not correct; that line has been changed. That is what I intended it to represent and so far as I know it is approximately correct. I can take

3256 the profile and indicate at the top of the map from section to section what part of the road it covers.

Mr. Anderson: I think that that is the better way to do that, otherwise I would have to go into it now.

The Court: Can't you do that now from the notes you have; wouldn't the notes show it?

Mr. Anderson: This profile has a number of
3257 things on it.

Mr. Burnell: Do you mean the surveyor's sections.

Mr. Anderson: Yes.

Mr. Burnell: I think it would be the best way.

The Witness: I could not do it from my notes.

Mr. Anderson: Also we want to offer the profile in evidence.

3258 Mr. Burnell: That is objected to on the ground that we urged to the resolution and upon the additional ground that it has not been shown that this profile has ever been accepted by the board of supervisors.

The Court: Overruled. The same ruling will be made as has been made with respect to the resolution.

(The profile in question was received in evidence and it or a copy of it is one of the exhibits to be certified up.)

3259 Monday, November 25, 1918, 10 o'clock a. m.

W. SIMES,

recalled in behalf of the defendant, testified as follows:

Direct Examination

By Mr. Anderson:

I live at Cornell. That is the point indicated on this map (Exhibit 6) by the word "Cornell," where one of the yellow roads runs into the
3260 other. I have lived there three years the 10th of last August. I have the hot mineral springs and the postoffice there. The hot mineral springs located at that point. We run it as a resort. I am familiar with the road that runs from Triunfo—that is, from Cornell to Triunfo, up through the Russell Ranch. I have been familiar with that three years from the 10th of last August. I drove the mail wagon over it
3261 for seven months. It certainly is a passable wagon road. It is better now than it was three years ago. Three years ago it was always used by wagons. Automobiles came in there when I went there—the first summer that I went there. That has continued; I counted 53 in there, in one day, in my yard. That road has got some little steep grades. The longest grade is about twice as long as this room. I wouldn't know about the percentage; machines go up; no difficulty in getting up that I ever observed. My

3262 place, where I parked the 53 machines, is right in Cornell, right at the postoffice, where the hot springs are. I suppose the road which I am speaking of, which I have described here, is the road running from Triunfo on the state highway over to Cornell, as shown on the map, Defendant's Exhibit No. 6, the road marked in yellow on the map. It is the only road from Triunfo to Cornell. There is only one road, without you go by Zeres station; that is six
3263 miles nearer. There are some machines come this way. The regular road everybody travels over is the road from Triunfo to Cornell. The time of the year I had 53 machines parked at my place was in August and September; the first week of September, during the hunting season. These machines were machines of people who came up to hunt and take the baths. I carried the mail seven months; it was along
3264 in the summer, up until late in the fall the roads began to get very muddy. They begin to get muddy along in January. They don't get impassable; it is the creek you have to cross. The creek going from Triunfo to Cornell is the same creek you cross about five times. I would say that it was possible for automobiles in the rainy season, in the condition in which I know that road, to get through up as far as Russell's gate. Russell's gate is on the Russell Ranch, on the Ventura county side; I mean from

Triunfo to the Ventura county line; that is very adobe. It is about a mile and a quarter from the highway to the end of the Ventura county line. That is a part of the road that is passable for automobiles; they can get through, but it is dobe, part of it is gravel. From December to March automobiles cannot pass over the road from Triunfo to Cornell and come through from Triunfo as far as Cornell, because they could not get across the creeks. There was five machines in to my place yesterday, only the one way to come, from Triunfo. The road is in better condition now than three years ago. It was in such condition three years ago that machines could get through from Triunfo to my place at this time of year. There has been machines in there at Christmas time. It was dry last year up to January. That is the time that the machines came through. During the rainy season, when it was actually raining, or within a few days after a heavy rain, I have seen machines go over that road. We have had two or three days rain last week; we had a heavy rain Saturday night. During the months of January and February, that road is not traveled by automobiles very much; simply because they can't get across the creek. It is much traveled by other vehicles than automobiles, say by wagons, during the months of January and February. The mail comes in every day. It

only missed twice last year, that is, as far as Cornell. There is travel beyond Cornell up in the mountains in the months of January and February; they are hauling stuff in there; leave it at my place and take it up in small loads in the winter. They take the loads off the wagons and take lighter loads. They take up twelve or fifteen hundred; they take that up in small quantities.

Recross-Examination

By Mr. Burnell:

Q. Mr. Simes, referring to the truck that you say passed Cornell, how far from Cornell did that truck go, to your own personal knowledge—not what some one told you, but what you saw yourself? A. I will tell you where those machines went this summer.

Q. Of your own knowledge—not what someone told you. A. Yes. I seen them camp there. They went to what they call Mrs. Haynes. They had a camp there where they were hunting, and this truck had six men on besides five dogs, besides the provisions and a tent. That was a hunting outfit. Mrs. Haynes' place, I would say, is about 2 or 3 miles from my place. That is where these machines went. They went there to hunt. Mr. Decker had the place rented. At the time that I saw this load of 1800 pounds being taken down to Cornell, there was two horses put on the load. The

load stopped in front of my place and took the parcels post stuff with him. I will tell you how I know the load was 1800 pounds. I asked him how much he had on and he said he had on 2000 or 2200, and I told him I would bet him a dollar that he didn't, that he didn't have more than 1800. We were talking about it.

Q. Well, what happened then? A. Well, that was all there was to it.

The Court: Did you weigh the load? A. No.

The Court: You simply infer that you were right. He said he had 2000 on? A. Yes, he said he had 2000 or 2200.

The Court: You were willing to bet a dollar that he only had 1800? A. Yes.

The Court: You didn't make the bet? A. No, he didn't. That is the extent of my knowledge as to the weight of the load.

Redirect Examination

By Mr. Anderson:

I examined the load. It was weather boarding and stuff, and there was five sacks of grain on, and I think a cultivator, and there was three or four packages of parcels post, canned goods and groceries. This Haynes place is up over Nigger Hill. You have to go over Nigger Hill to get to Haynes,' The load that I bet on went to Mr. Rumples. I didn't see it go over; I

3274 didn't follow the load. When I saw it it was in front of the house at Cornell. I don't know whether some of that load was taken off going over Nigger Hill or not. I don't know where they put it; they generally leave it there when they don't haul it. All I know is that this was a load which I thought weighed 1800 pounds, and the other man said it weighed 2,000 pounds, and then it moved off and that was the last I saw of it.

3275

Redirect Examination

By Mr. Anderson:

They haul to my place and then haul on in smaller loads. That is up Nigger Hill. The largest load I have seen them take up Nigger Hill with a two-horse wagon I seen them take up about 1800. I have seen automobiles go up there; I have seen machines go there this summer. It was in the month of September; there

3276 was a good many machines went up. Some went up this summer—more went up this summer than I ever seen before. There was one closed machine and there was a truck went up. I didn't believe they could get up, but they went up. I don't know what makes they were. They went right past my house and went up over the hill.

Q. Which is the part of the road in the rainy season when the creeks run down that is difficult to travel? Is it the road from Triunfo

3277 to the Ventura county line, or the road from the Ventura county line to Cornell that is difficult to travel in the winter on account of the mud? A. Well, both roads from the highway, but when it leaves Triunfo down to the Ventura line, it is adobe.

Mr. Anderson: And that is the hard part? A. Yes. Part of it is gravel. I said a mile and a quarter of road there that is bad. Now,
3278 Mr. Russell and those men have got it graveled half way, and it is only probably a half a mile there that is dobe. The road from the Ventura county line on the Cornell—that is, from the Russell Ranch on to Cornell after the creeks become passable, is good, I would say, for a mountain road. After the average winter storm it takes a couple of days or maybe a day for the creeks to run down.

Mr. Vallee: Now, at the time Mr. Anderson
3279 introduced the petition of the Rindge interests to the board, he stated that he didn't have the copy of the original letter that was sent to Mrs. Rindge and the Rindge Company from the board of supervisors, and asked us to produce a copy.

Mr. Anderson: No objection to that whatever. I don't think it is necessary, because it is agreed that we were all there, and that there was a hearing.

3280 Mr. Vallee: And that you received notice of the hearing?

Mr. Anderson: And that we received notice of the hearing.

Mr. Vallee: You stipulate to that.

Mr. Anderson: Yes, that is, as to both hearings we stipulate.

Mr. Vallee: As to both.

Mr. Anderson: As to both, yes. We cer-
3281 tainly had notice, or we would not have been there.

Mr. Vallee: So far as this particular phase of the case is concerned, at this time we rest on it.

Deposition of

MRS. HARRIET WILBURN,

a witness produced on behalf of the defendants:

"Direct Examination

3282 By Mr. Newby:

My name is Harriet Wilburn. I reside near Bakersfield. My business is teacher. I have been a teacher about 18 years. In the year 1914 I was teaching in the Decker District in this county; it was the last part of August, 1914. I taught at the Decker school for nine months, beginning about September 15th, 1914, and ending about June 4th. During that period of time eight children attended school at the Decker school house; four of them were my

3283 children. The other four belonged to the Decker family. At the time of my employment as a teacher for the Decker school, I think that no one was present except the Decker family. Mr. and Mrs. Decker were two members of the board and the other members of the board weren't present at all. Mr. Lowe, assistant superintendent, was not. He was there when we was talking it over, but when the contract
3284 was made he wasn't present. Information was given to me as to the requirement for a teacher; of course I had to be a qualified teacher of the county and the requirements were that I was to have at least four children of school age in order to make up the quota for the district, and I was to rent a cottage Mr. and Mrs. Decker were then building, paying them $15 a month. Mr. and Mrs. Decker informed me that that would be necessary. Mr. Lowe gave
3285 me information on that question, and Mr. Keppel, the county superintendent, told me that was the ground on which they were employing me because there are children to make up the number required and also to bring more money into the district, of course. I did not teach there after the summer of 1915, as I understand.

Q. At the time of your employment or any time prior thereto was there any suggestion made either by any member of the board or any county official as to securing extra children

for the Decker district? A. Well, no one but Mr. and Mrs. Decker spoke to me about it to see if I could get some probation children to take out there to board, and they asked me to do that. I did not do it because they expected me to board them, understand, and it was too much. I didn't attempt it. We lived at the home of Mr. Decker for three weeks until they prepared our house and then we lived in a separate cottage, about an eighth of a mile from the school house. Charles Decker was the name and I don't remember name at all; she was his wife."

"Cross-Examination

By Mr. O'Connor:

Q. In saying that only eight children attended school in Decker School District during the year of 1914-15 do you mean that that number included all the children of school age within the district during that time? A. That was absolutely all the children that there were ther

Q. There were no children then of school age belonging to any family in that district other than those of your family and those of Mr. Charles Decker's family? A. There were not none at all excepting those two families."

The defendants at this juncture moved the court to dismiss each of the said actions upon the ground that the respective complaints, and

each thereof, failed to state a cause of action particularly in that it appears on the face of the complaints in each action that there had been no compliance with the provisions of article VI of chap. 2 of title VI of part III (Secs. 2681 to 2698, both inclusive) of the Political Code in the matter of the laying out and establishing of the proposed roads or highways for the respective uses of which the respective parcels of land involved respectively in said action were sought to be condemned.

This motion was argued at length, and was submitted to the court for its decision, and the court after considering the same denied the same as to each of the said cases.

To this ruling the defendants then and there excepted.

Exception No. 57.

That thereafter the following further proceedings were had and taken:

Mr. Anderson:

Now, if the court please, at this time I wish to make a motion to strike out certain testimony, the motion as to each portion being upon the ground that it is incompetent, irrelevant and immaterial, upon the ground that it has not been connected, according to the promise of counsel to connect, and particularly upon the ground that the evidence shows on its face that none of the settlers in the Yerba Buena District, to

3292 whose testimony this motion is addressed, have any means of access at any point to either of the three roads in question. (Referring to the so-called main road, the so-called Alisos Canyon road, and the so-called Beach road, the latter not being involved in this bill of exceptions.) The basis of that objection I will point out briefly after I state the motion.

Thereupon upon the grounds stated the de-
3293 fendants moved the court to strike out all of the testimony of the following witnesses in so far as the same, or any part of the same, related to the conditions surrounding the Yerba Buena settlement or the Yerba Buena settlers or the means of access to and from said Yerba Buena settlement:

From the testimony of Ernest F. Decker:

From the testimony of Jacob H. Richter; being the whole of the testimony of said wit-
3294 ness:

From the testimony of John Fitzpatrick:

From the testimony of M. A. Vennaman, being the whole of the testimony of said witness:

From the testimony of Mary LaFonde, being all of the testimony of said witness; and,

From the testimony of Kenton A. Miller.

In each of these instances the particular testimony to which the motion is addressed was specifically pointed out with great particularity, and the motion was in every respect correct

3295 in form, and did not embrace any matters that did not relate to the Yerba Buena settlement and the conditions surrounding it and its settlers, nor any matters to which an objection was not taken and reserved at the time the testimony was admitted.

The court denied this motion, and each and every part thereof, as to each and every part of the said testimony of the said witnesses to
3296 which the same was addressed; but that said denial was made upon the merits of the motion, towit: because the court deemed the grounds of the motion not well taken, and was not based upon any technical defect in the motion, or in any part thereof, or upon the ground that the same, or any part thereof, contained matters which were not germain to the particular point raised by said motion.

To this ruling, and to the whole thereof, and
3297 to each and every part thereof, the defendants then and there duly excepted.

Exception No. 58.

In support of this motion and prior to the ruling thereon, Mr. Anderson, on behalf of the defendants, made the following statement in elaboration of the grounds thereof:

"Now the whole point of the objection is simply this, that it is demonstrated from the evidence that the Yerba Buena settlers had no means of ingress or egress by way of any wagon

3298 road from their settlement to what is known as the Triunfo-Decker road on the east, or to any point that would connect with the main road at the Ventura county line, the testimony showing two things conclusively: 1st—that the only traveled road, the only road on the ranch at the present time, is exactly 400 feet to the north of the point where the proposed main highway ends, and, further, that the only road that is even traveled by the settlers to reach
3299 the ranch proper is a road that enters the private property of the Rindges at the point in red (on Exhibit 6) approximately a mile and a half from the Ventura county line.

"They have no means of ingress or egress to the proposed main road, and they have never had to any point where the proposed road now lies excepting over the private property" (of the Rindge Company).

3300 Mr. Burnell: If Your Honor please, the theory upon which the testimony was introduced was that it would be connected up by showing that there has been a road whereby the Yerba Buena people might obtain access to the so-called main road. Your Honor had already ruled against us, on the theory that we might introduce the evidence of these settlers as to whether or not they could get up there to the main Malibu road by the lateral roads, so that question is no longer an open question.

3301 Your Honor ruled against us on that and we must submit with grace although not with conviction to Your Honor's ruling. As to these particular settlers' testimony, and I don't think it is necessary for me to refer to them specifically, that is the specific testimony, I think your Honor has it in mind, it was that for years they had traveled over a road which some of them referred to as the old Mundell road and others referred to it as the Marion Harris
3302 Jasper Thomas road, and they testified with unanimity that this road end ended just where the proposed Malibu road ends, at the state line.

Mr. Anderson: Only one witness testified to that.

Mr. Burnell: My recollection is not the same as yours but the record is here and it will show. My recollection is that others testified as to
3303 using that road. At any rate, if only one person testified to that, there is testimony which we promised to furnish showing that for a long time settlers had had access to the point where the proposed road comes in over a road which they used freely, which all persons traveling in that community used without let or hindrance until I believe, within a short time ago when a gate was placed across the road by the Rindge interests. That would cut no effect, however, if it was a public road. They

could not make a private road out of it by obstructing it. There is no testimony to show that it was a dedicated road or that it had been acquired by dedication, but I take it it is sufficient to show that it is a road that has been generally and publicly used by the public for years. If we were seeking affirmatively to establish the fact that there was a public highway it might be that that would not be sufficient. I say it might be. I don't know as it would. But we are not offering it on that theory. We are offering it upon the theory that the fact that a road had been used for a number of years at least raises a very strong presumption that it is used with right, that it is a road over which everybody has a right to travel and the fact that they have traveled it without let or hindrance indicates that it has been made a road by some method because if it is private land, the public would not be allowed to go over it freely, so that we think upon that score, the evidence is sufficient. Now if Your Honor please, we hardly expected this motion to be brought up this morning so we are not very well prepared to argue it. So, I am not going to take up a lot of time—

The Court: May I suggest this to you. That in view of the fact that the motion is quite voluminous and will require a good deal of examination, that when the case proceeds

this afternoon, that a ruling upon this motion will be made at the conclusion of the case.

Mr. Anderson: That is agreeable to me, and I think Your Honor has been on the ground and seen the physical conditions and Your Honor knows that the testimony of Mr. Fitzpatrick—I have every confidence that that is the only testimony which was given and it obviously must have been some other stakes that he saw because it is a physical fact and that testimony, does not raise a conflict.

The Court: I only made the suggestion to obviate some delay.

Mr. Burnell: Now first, I will cite to Your Honor two California cases: Patterson v. Munyan, 93 Cal. 128, reading from page 131.

(Counsel reads to the court.)

I simply cite that in furtherance of what I suggested a moment ago that the fact that a road has been openly traveled raises a strong presumption that that is a public road. The Supreme Court of Michigan has also delivered itself of some wisdom in that line in the case of Wickes v. Ross, 37 Michigan 464, reading from page 466:

(Counsel reads to the court.)

Now I have referred to a case in the 18th Maine, page 409, Young v. The Inhabitants of Garland and the question is whether a cer-

3310 tain strip of land is a road or not and at the end of the opinion, the court says:

(Counsel reads to the court.)

The Court: What have those decisions to do with the decision of Judge Henshaw?

Mr. Burnell: This, Your Honor, that if the object of the action is to declare a certain road a public road, to show that a public road exists, we cannot rely merely on the proof that a strip of ground, more or less indefinite, not located
3311 in a fixed place, is a public road. More particularly is that true when the attempted proof shows that the road in question was a wandering thing governed by the position of sand and tides on the beach. But that decision would have no bearing in a case where the proof was merely for the purpose of showing that certain people had access by a travelled highway to another certain point. Now, it may be that such a road was never dedicated and it is not a public
3312 highway. I am simply saying that that raises a presumption that it was, which has not been rebutted. These people traveled for years over that road and nobody stopped them. Now, there is one other point I want to suggest which I do with some diffidence, because we don't want to try to reopen a matter which has been ruled on, but I don't think that we argued this point before.

3313 GEORGE A. FREMLING,

a witness called on behalf of the defendants, being first duly sworn, testified as follows:

That he lives at Cornell, and has lived in that vicinity about 12 years; that he is familiar with the road that runs from Cornell to Triunfo described by the witness Sims, and had been traveling over that road at least once or twice a month for 12 years; that it was a pretty good
3314 road for wagons and teams, could be used for automobiles, and had seen them use it; that it has become better since he first knew it, is still usable for automobiles and wagons, and has no heavy grades; that you cross the creek between Triunfo and Cornell 5 times; that he has traveled the road in rainy seasons, and that aside from the time that the creeks are in flood and are impassable by reason of water it is a very good road, but could be better.

3315 On cross-examination this witness testified that he had traveled the road in an automobile several times, made a practice for a period of 28 months up to last March of going home from Los Angeles every Saturday, but did not always travel by automobile; that part of the time he used a Ford, part a Chandler, and on one occasion a Buick; that he also went by automobile stage which made regular trips, but did not want to give the impression that he could get in there on every occasion, but was never held up; that

3316 he usually went by the Russell Ranch; sometimes but very seldom by way of Dejo; that the usual route of the stage was through Russell Ranch; that there were gates on the road, remembers 5, which were kept open or closed according to the season.

On re-direct examination he testified that he had used the road up Nigger Hill beyond Cornell, clear through to the coast clear to the end near Decker's; that he had driven teams up
3317 there with loads; that he had never weighed the road, but had hauled loads up with 2 horses that he estimated weighed 1500 pounds; that he had seen others use the road, with pretty near every kind of a vehicle—wagons, buggies, surreys and automobiles ever since he has been in the country—that is, wagons; and automobiles in the last 6 or 7 years.

His testimony on re-cross examination was
3318 substantially to the same effect.

The following testimony was also given:

Q. Are you interested, Mr. Fremling, in a project to have a road put through from the state highway to Cornell? A. Am I interested in a project of a road from where?

Mr. Burnell: A road from Triunfo to Cornell, and then in a general easterly direction towards Topango Canyon and down the state highway to the ocean. A. Why, yes, I would like to see that. That would help the majority

3319 of the population of those hills to have such a road.

Q. In 1917 you took around a petition and attempted to secure signatures, to the board of supervisors to build such a road, did you not, in place of the proposed Malibu road? A. I signed a petition.

Q. Didn't you circulate a petition also? A. Yes, I got a couple of names.

3320 Q. What? A. I think I got a couple of names.

Q. This was a petition asking the board of supervisors to build such a road as I have described instead of the proposed road through the Malibu Ranch? A. Yes.

J. H. ROEBERT,

a witness called on behalf of defendant, being first duly sworn, testified as follows:

3321 That he resides about 3 miles beyond Cornell, and has for the last 2 month past and before that for about 12 years off and on; that he has been familiar with that country for 10 or 12 years; that in 1915 and since the road from Triunfo to Cornell was fair in dry weather, but in the rainy season it was pretty hard to cross the creek; that the adobe part of the road is about a mile from the state highway for about a half a mile through the alfalfa fields in the Russell Ranch; that the balance of the road is

3322 fairly good; that its condition after the streams dry up is fair; that he drives a Ford and found the road passable during those times; that he is familiar with the road beyond Cornell over Nigger Hill, lives up there and travels it frequently; that it is passable by wagon, and by automobile, part of the time; that after a rain you cannot get in with an automobile on account of the rocks; that it is not passable by a machine after the water has run off as the rocks are
3323 exposed and cut the tires; there is about 100 yards around Rocky Point that is pretty steep, which is the only bad place on the hill; that in other words the rocks stick up so high as to interfere with the machine, and then it is a little steep too; that aside from the times that the water washes out the road at Rocky Point he has seen vehicles go up and down Nigger Hill—two-horse teams with a ton load.

3324 On cross-examination that they used no other power than horses, and carried 2,000 lbs. up the hill with nothing but two horses; that he has not seen that done very often, but has seen several pretty good loads go up; I have also seen loads around a ton in weight partly unload, and the load be taken up the hill in instalments, many times. That is the usual method of handling loads of that size over that hill. Generally unpack; that a team hauling a load of 1500 to 2000 lbs. without unloading and taking

3325 it up in installments, and doing this regularly, wouldn't last very long; that a man who wanted to use his horses right wouldn't try it.

Mr. Anderson: I don't suppose a man that wanted to use his horses right would haul loads of that kind every day over those hills.

Mr. Burnell: Well, if that is stipulated to, all right. Now, I will ask you about this Rocky Point, do you know the grade at that strip there, what it is? A. No, sir, I don't; but I do know
3326 there is another road that started under that Rocky Point road. That road has been in existence for the last twelve years but has never been completed. The only way I ever went up from Cornell to the territory beyond Cornell is by the Nigger Hill road and Rocky Point road. That is the only way I know of to take a team up. That is the only road.

That the Rocky Point road is the only way
3327 he knows of to take a team out; that it is not merely usable in summer only, but all the time excepting after a rain.

Every rain washes it more or less; washes the loose dirt off, and then we fill it in. By "we" I mean the fellows that live up there. They have done all of the work on that road; voluntary work. The roads are sometimes exposed to such an extent that an automobile attempting to go up the road would hit the pan. That happened several times; it happened last

week, a fellow lost all his oil and had to go back down. I don't know what kind of a machine he had.

That it is pretty rough; that his car is a stock Ford; that he never had the gears changed or anything done to the tires; that he don't drive up Nigger Hill much; that he hasn't driven it up Nigger Hill for about 3 years, because he didn't have money enough to buy a new one, and figured that a man who drives a machine up Nigger Hill ought to be able to go out and buy a new one; and that is the way it has always been; that the rains upon the portions of the road crossed by the streams between Cornell and Triunfo usually washed the banks so that sometimes it makes a steep jumping off place in the road into the creek; that it might be possible at such times to drive an automobile over that road across the creek without fixing the road, but that the first man along fixes it; that all of the work of repairing the road after such rains is done by the people that live in that vicinity who have occasion to use it.

So far as I know, any part of the road work between Triunfo and my place that I ever heard of being done by anyone, is work done by people that live around there. There are gates on that road; that there are 5 or 6 or 7 gates on the road between Triunfo and Cornell.

3331 That some of those gates are between Cornell and the Ventura County line—about 4, and the rest between the Ventura County line and Triunfo where the road goes through the Russell Ranch; that the gates are sometimes closed, and that he thinks there are signs on the outside gate to shut the gates.

On re-direct examination he testified that those gates are never locked; that the banks of
3332 the stream are washed out by high water just like every other mountain road he has seen; that the road around Rock Point is a fine grade and all it needs is a little work.

I don't know of the county doing any work on any of those roads up there.

H. I. COMLY,

a witness having been previously sworn, was re-called and testified as follows:

Cross-Examination

3333 By Mr. Anderson:

Q. I will ask you if you put those section marks on since adjournment? A. Yes.

Q. That map that you hold in your hands, has that been identified by number? Can you give us some identification mark—what is the number, Mr. Comly? A. 343,572.

Q. No, the exhibit. A. No. 20. (This is the profile map of the Decker road survey, to be certified up by the clerk as one of the exhibits in this case.)

3334 Q. Now, calling your attention to that Exhibit No. 20, and asking you to look at the elevations at the southerly end, the end nearer the Rindge line, I will ask you if—comparing them with the map, Exhibit 6—I will ask you if it is not a fact that this survey of the map you hold in your hand commenced about half a mile from the edge of the Rindge property, the northern line of the Rindge property? A. This profile commenced about half a mile to the
3335 north.

Mr. Anderson: Mr. Comly furnished us at our request a list showing location and length of traveled road within proposed right of way of new Malibu road as shown on County Surveyor's Map No. 8070 (Exhibit "A"). I am not sure that this was put in evidence.

The document in question was then offered and received in evidence as Defendants' Exhibit
3336 21, and is one of the exhibits to be certified up by the clerk.

J. C. PATTON,

recalled in behalf of the defendant, and testified as follows:

Direct Examination

The Court: Is this on the issue of damages?

Mr. Anderson: This is on the issue of damages, yes, sir.

3337 By Mr. Newby:

The experience I have had as a cattle man is that I have worked with cattle and around cattle all my life. I have had experience in Indian Territory, Oklahoma, just now, and Texas. In my opinion, the segregation of the Malibu Ranch in the manner proposed by the highway referred to as the main road would damage the ranch as a stock ranch in these
3338 particulars: It divides the pasture. It is a narrow strip anyway, and divides it in many places, and in many places it cuts the pasture from the water at certain seasons of the year, and at some seasons of the year most every point on this road would be a detriment to a stock ranch; it would be used at certain seasons practically every acre for stock. After crops are harvested, we use the fields for pasture, and in the summer seasons we use the moun-
3339 tains. In places this road would divide the summer grass or the late grass from the water places, and stock would have to cross the road to get from their grazing to the water; and in my estimation there would be a great damage in many ways to the ranch as a stock ranch. Beginning at Las Flores Canyon, at the eastern end of the ranch, up to Sweetwater, the building of the road there would separate a small portion of pasture, but the damage would not be so great there as other places. From Sweet-

3340 water to Winter it would divide the field that we use after the harvesting of the crops for stock; the stock would have to go across the road to use the field. The location of these fields to which I have referred and how the road would divide them, is that just east of Malibu Creek we have fields we use usually to plant corn and milo maize or grain, it would divide the field and after crossing the Malibu
3341 Creek it would go through the alfalfa field which is used for calves and poor cows and hogs, which would cause us to have to use both sides of the road. After a quarter of a mile, then for a half a mile it would go through a big alfalfa field which would do damage in the way of cultivating, and be a hindrance in pasturing both portions of the field without the stock crossing the road. There would be a portion of the ranch left on either side of the road.
3342 At that particular portion it would interfere with the cultivation of the field, and that is true at every portion of the ranch where the road crosses through the land that is tillable, and I have heard it estimated and it would be my estimation that it would cost one-third more to cultivate the field after being divided by the road. I believe I have stated all that I desire to state with reference to the condition between Sweetwater and Winter. The watering of cattle would be affected by the road.

3343 Below the road in the summer season it is salty between the road and the ocean, it is usually salty and the cattle when using that part of the country go up the Malibu Creek to where the water is fresh. And the road built at that portion would prevent the cattle going up the creek for the fresh water, unless there was some provision made. From Winter Canyon to Marie, the proposed road goes along the side
3344 of the hill which is used for pasture and cuts off out of probably 60 or 70 acres, it cuts off 3 or 4 acres which would lay south of the road. From Marie to Puerco Canyon the proposed road runs practically about midway through a narrow strip of field possibly not to exceed 300 yards wide, dividing the field and leaving half on either side, or thereabouts. I don't call to mind just the amount of acres in that field. That is cultivated land; and also it would make
3345 a great amount of damage in the way of the stubble, as we have a little narrow strip on either side of the road. The stock would have to go across the road. That would be the easiest way they could get out from one field to the other. It would have practically no effect upon watering the cattle between those two points. The damages to the territory from Puerco to Corral would be practically the same as from Marie to Puerco and from Corral to Sosto; the proposed road from Corral goes through the pas-

3346 ture, leaving a strip of from 200 yards to near half a mile south of the road, and a strip of possibly three-quarters or a mile wide on the north of the road, separating the spring grass—the slope of the land is south of the road, and the road runs along on top of the hi'l just on the bluff. All the south slope is on the south side of the road, or south of the road, which is our early pasture, because it becomes green first; and the stock would have, to get to this
3347 lower part, to cross the road. Consequently they would have to pass back and forward across the road to use both points of the pasture. There is water at all seasons of the year usually in both Corral and Sosto canyons above and below. The proposed road from Sosto to Ramirez divides the pasture almost midway in places. The road leads up Sosto Canyon up the side of the hillside, I should say between a half
3348 and a mile. It follows up Sosto Canyon and up the slope, leading out on the divide in a little dry canyon, leaving a strip of land something like a half to three-quarters of a mile south of the road. It goes over and into Latigo Canyon, up Latigo Canyon, dividing this canyon part and pasture from the water, to a certain extent, in the dry season. In the summer months there would be no water north of the road in this particular canyon. There is springs south of the road, and in the summer season the wild

alfalfa and late feeds are best back in the hills on the north side of the road. Then it leads out into Escondido Canyon and crosses Escondido Canyon and out through on the hillsides and then into the fields near Ramirez Canyon. The water in the Escondido Canyon is usually on the south side, as the other canyons, as stated, in Latigo Canyon, and the principal part of the feeds for the summer months is north of the road in the hills. The building of this proposed road would separate all of the pasture land south from these springs to the north of the road, and the summer pasture, as I call it, is north of the road. There is the fact of stock traveling from the north side to the south side of this proposed road. In many instances, for the reason that the hills are so steep, they always go down a divide. The hillsides are so steep that it is almost impossible for them to get down some of the canyons; and we find in moving stock from place to place they always come down the divide, not down the canyon, and if the proposed road was built through this pasture, if the cattle were forced to go under bridges or through openings left for them, unless it was a gate or something, you would have to force them to go down the canyons and make trails down the rocky bottoms of the canyon to get water. From my observation it is difficult to get cattle to do that. It would

not necessarily require special operatives to see that they did not go down those rocky ways, but it would take a great deal more time to move a bunch of cattle from place to place, as it is difficult to get them to take to the canyons. In rounding up, a man rides to the back side and they holler, and then they will all go down the divide. In order to move a bunch of cattle a man would have to stay with them. It would require more direction, more time and labor. From Ramirez to Walnut the road runs through the field, leaving a strip a quarter of a mile to the north of the road—anywhere from a quarter of a mile to a mile south. At Ramirez Canyon it would affect the stock from going to the lake, also it would divide the pasture from the corral. In Ramirez Canyon we have a bunch of good, substantial corrals or round-up pens and this road leads across above it. In order to get the cattle in the corrals we would have to get them through gates or over bridges, which would be very difficult as we have a pasture a half mile wide now leading into the corrals. The portion going through the fields would make it more difficult to cultivate that particular land. From Walnut to Zuma is practically about the same as from Ramirez to Walnut; it is right through the fields, leading down near Zuma Ranch, it crosses the alfalfa, and the irrigating system and the Zuma field. There is water

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3355 in Walnut Canyon. I believe where the survey runs it would take out some watering troughs. We have some troughs fixed up with leak pipes. The proposed road does not separate any pasture land from the springs from which we get the water, only in the summer season. The springs are in the pasture above the road. In the dry season, south of the road, it would be dry. Last year it was dry all the way from
3356 where the road crosses Walnut, it was dry, but there was springs on the north side. If the cattle were on the other side of the road in the summer season, in order to get to the springs they would have to cross the road. It would be the same interference with I have testified to at other portions. From Ramirez to Zuma there are barrancas that the road crosses, I believe, no pasturage there, only in the field. The road stays in the field all the way from Ramirez
3357 to Zuma with the exception of what goes down the hill at Zuma camp. It goes through the horse pasture there. From Zuma to Hog Flat the proposed road leads out from Zuma Canyon through the alfalfa field to about possibly a quarter of a mile, and then leads through some hillside land up on top of the hill, into the farm land, and stays along close to the ocean bluff, in the field, over to Hog Flats. The proposed road has no effect on the watering there, with regard to the watering of stock, with the exception that

as stated before, whenever they were in the fields they would have to cross the road to get from the fields to the Zuma Lake. It damages the irrigating system, too. The railroad crosses Zuma lake; part of it is north of the right of way; nearly all of that lake is north of the right of way; in distance, it is about half way; it extends up to the north quite a ways. That fluctuates according to the amount of rain. In the spring season it is not as big as in the summer.

Taking the territory from Hog Flat to Trancas, the proposed road runs along at the foothills on the beach, most of the time staying in the field, and there is pasture land below the foothills that is not cultivated, and the stock in pasturing in the fields, use that bluff for a wind break, and the picking of dry grass in the winter season when they are turned out. It would affect the cattle going from the fields, and across these foothills. They would have to cross the road either way. The pasture land at that point lies between the railroad right of way and the proposed highway. With reference to the watering of stock at that particular point, the proposed highway has no effect, I believe. They have a windmill at Trancas, but that is on the north side of the highway. From Trancas to Steep Hill, the proposed highway in that strip stays under the bluff I was speak-

3361 ing of, and then comes up the same place our road does. From Steep Hill to Encinal the road runs midway through the field. Its effect upon stock crossing is the same as other places; they would have to cross the road in different ways going and coming. At Encinal there is water on both sides of the road. Usually the water runs in Encinal all the year around. From Encinal to Lachusa it goes through the fields,
3362 several fields, some four or five fields. The fields are about halfway between the foothills and the beach. It divides those fields. There is pasturage on either side of the proposed highway. There is water in the canyon we call Bridge Canyon, each of Lachusa. The proposed highway affects that water as it crosses just above where the springs are, and cattle, to get to the water, would have to cross the proposed highway, and water right near the highway.
3363 The effect of the highway being close by is that if there was much travel on the highway, you could not get cattle to come to that place for water, as they are afraid of automobiles and they won't stay around a public thoroughfare very much. There are barrancas in that territory uncultivated, that is used for pasturage. It is uncultivated land on both sides, above and below the proposed highway. There are uncultivated fields there. There are also cultivated fields in that territory. The cultivated fields

3364 are used for pasturage after the crop is taken off, and the uncultivated fields, we use them for pasture, too. We use fields for pasture for winter, as we find it more valuable to have places left that have got long, dry grass for winter pasture, so we use them for winter pasture. From Lachusa to Little Aliso the road goes just about the edge and possibly in to the edge of the alfalfa. The stakes are practically
3365 on the north edge of the alfalfa field. The alfalfa field is south of the proposed highway, mostly. We are using it at present for hogs, and we very often put poor cows in, at different seasons of the year. North of the road is used for pasture. In the winter time, at this particular point, that is used for pasture both north and south of the road. At these particular points, there is water both north and south of the road at all seasons of the year.
3366 There is a reservoir there, a watering system; that is east of Lachusa. That is between Lachusa and Encinal. The road comes between the reservoir and the alfalfa fields. The stock at this point between Lachusa and Little Aliso get their water from the reservoir system or from the Aliso or the Lachusa. The proposed road separates the pasturage so as to interfere with the cattle watering at that particular point it would interfere with our present watering places, because the present watering places

are south of where the proposed road crosses. So it would be necessary to provide other means of watering on the other side of the road if this proposed highway is built.

From Little Alisos to Nicolas the proposed road runs through fields, a strip of fields about a quarter of a mile wide. The road runs, as best I remember, something like midway of the center of it. There are fields practically all the way from Little Aliso to Nicolas; pasturage on both sides of the road, and used as such. There is a spring north of the proposed road about halfway between Nicolas and Little Aliso, and there is water in Nicolas the year around. Assuming that the cattle were pasturing on the south of the road, they would have to cross the road if they went up to this spring, and at all seasons of the year there is green grass around the spring; that is on the hillside between Nicolas and Little Aliso. The proposed highway would separate the stock from this spring; the stock that was using the field. The only other fact at this particular point that enters into my estimate as to damages is that it separates the fields and the foothills because, as I stated before, where our winter pasture lays is in the stubble fields, whether it be bean or barley or what kind of stubble fields. The stock usually goes on the hillsides to graze and to lay and rest on the hillsides. The cattle

3370 feeding in the bean fields necessarily require some grass or hay in addition to the beans, and they go into the fields and eat bean straw or beans, which acts to a certain extent as grain for a horse. They get their drink and graze on the grass a while as hay. They go up on the hillsides and get grass after grazing on the bean straw. I don't think that bean straw alone or beans alone would be very good for animals unless they got some hay with it;
3371 that would be required daily in order to provide proper food for cattle. I have observed that the cattle have done that. These bean lands I mention, some of portions of those lands are on either side of the road. The same conditions I have just described with reference to the feeding of the cattle and water were observed at all portions on the ranch where the proposed highway went through cultivated fields. The
3372 cattle would feed on the stubble and waste beans and on the barrancas and hillsides, which was a daily occurrence; they must have this hay or dry grass; they will pick all of that dry grass. Since the harvesting of the bean crop this year and right now, the cattle are doing that. From Nicolas to Arroyo Sequit the proposed road goes along the foothills, from the bluff near the beach to the foothills, maybe 200 yards or three-quarters of a mile wide. The first half mile it goes about half way through

a bean field or cultivated land, and the next half mile is barrancas and pasture land and then it goes into another field, and for a quarter of a mile, and then on to the Sequit. There is pasture land on either side of the road; just about the same condition exists in this place as between Encinal and Lachusa. With reference to water at that point, the proposed highway separates the springs; the springs and watering trough would be just north of the proposed road in what is called the Willow camp; the canyons are so steep that we would have to have some provision for them to get to the water; at the present time it is inaccessible. From Arroyo Sequit to the Ventura county line, the first half mile or possibly three-quarters mile it goes through a field and then down under the bluff on the beach, staying along close to the bluff, and coming up about the Ventura county line into that field again. The pasture is practically all on the north side with the exception of where it goes through the field. The distance through the field is about half a mile. At that particular point I would judge it would leave possibly 40 or 50 acres south of the road, and the balance north. With reference to the water system there, the water is practically all north of the road. I stated that the building of the proposed road would add to the cost of cultivation; that is true with

reference to every part of the ranch where the proposed road goes through the cultivated land, and more so in the small fields, because it takes up so much time in turning and plowing and cultivating. A man can not plow as many acres per day when he has to make such short turns. In cultivating crops there is what is called a turn row, when you come up to a fence, usually there is not much stuff for 10 or 12 feet from the fence, where the team turns; there is that much waste space. It is usually planted but very little stuff grows there on account of the team turning around. I have described the difficulty of carrying the cattle across the public highway. That increases the cost of the management of the ranch to have it divided. My estimation is that if this proposed road were built it would increase the cost of caring for the stock half or two-thirds more than the present expenses. We would have more fence to look after and more changes of the stock, the pasture would be smaller, we would have to move them from place to place and they would have to be watched more. It would take more men and consequently it would take more men all around to handle them. It would require more horses for the men to ride. The men draw wages and they have to be fed and the horses have to be taken care of. Since I have been on

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3379 the Malibu Ranch, I have not kept account of the cost of cultivating these various fields through which the proposed highway runs, so that I could give it into particular fields. We would have to use an estimate on different fields, as I never kept separate account of the different fields. I have not kept account of the cultivation separate and apart from other accounts, only the occasions where I wanted to
3380 find out how much it was costing to cultivate, or how much it was costing to plow. I can tell how much it costs to plow a certain piece of ground, but probably on that piece of ground I did not keep account of the seeding. I have kept separate accounts of the cost of looking after the stock, the supervision of the stock; I know just about, and I could get the information from the office, as my reports show just what every man is doing and the bookkeeper
3381 can take up any subject and tell just what it costs.

Mr. Anderson: With one slight matter, with Mr. Patton, we may want to ask him about later, I think that is all at this time.

The Court: You may recall him for that.

Mr. Anderson: It is simply a matter of the acreage of certain land.

Cross-Examination

By Mr. Burnell:

Cattle usually find their way to water without the aid of anybody to lead them or drive

3382 them, where there is water in the general vicinity.

Q. Now, supposing that the proposed road that is to be built was built with a fence on both sides, and assuming there are bridges or culverts where the road crosses the various canyons which intersect the ranch, and assuming that there was a clearance of not less than 10 feet under each of those bridges or culverts, it would be sufficient clearance for the cattle
3383 to make their way under it, wouldn't it? A. Well, in answer to the question I would say it would be possible but not practical, as it would take some time for cattle to make trails under the bridges and in several instances, knowing where the road lays and the canyons, it would be impossible for the cattle to get down to the bridges. They would have to come down a steep mountain.

3384 On one side of Sosto Canyon, the cattle coming from the south, all the way from where it crosses the canyon to where it goes over the divide, it would be impossible for a man to ride a horse down there. Cattle will make trails for themselves down a hillside almost too steep for a man to ride a horse, but going the other way it is hard for poor cows to climb the hills, sometimes it takes them an hour to get up a hill. It is practically a mile from Sosto to the next canyon up and down which the cows

could get. The next canyon to the south is about a quarter of a mile from Sosto to Latigo. The water at Sosto is east of the proposed road. At Sosto Canyon, the roads run practically north, up Sosto Canyon, so that the cattle would have to cross the road to get water; if they didn't cross it at Sosto they would have to go one mile north to Escondido, or a mile south. They would have to cross a steep mountain, over to Latigo Canyon, which is almost impossible for stock or men to get over. It is a fact that where a road or field is fenced that cattle will usually make their way around the fence until they find a place to get through; but sometimes a fence will cause them to travel a mile when they could get water in a quarter of a mile. I am not able to estimate in dollars and cents the additional expense which would be caused to the owners of the ranch from the fact that the cattle would have to travel further to water than they do now. But you take a ranch with a thousand or 1500 head of cattle and where it affects all the cattle, it makes quite a damage in fattening, or raising your cattle for market. If you want to put a bunch to fatten, your grass may be good, but if they have got to go a mile to water, they will gain flesh very slow. In lots of cases the seasons are short, and you will not get them ready. The main thing is plenty of water, and the

feed doesn't amount to so much. Along most of the extent of the proposed road, the water is on the south side in the dry season. That is at the time of year when the streams and canyons dry up, then the water is on the ocean side. The springs are on the lower side; usually there is a lake on the lower side of the canyon. The Malibu Creek, for instance, and Sosto Canyon and Ramirez Canyon, Zuma Canyon and Trancas Canyon, all of them have lakes where there is water that goes under the ground. Going along in a westerly direction up the coast from Las Flores Canyon, the first water to be found, the principal water for cattle, is at Sweetwater Canyon, about a half mile east of Malibu Creek, right at the warehouse. At Sweetwater Canyon there is not water on both sides of the road; there is practically none at the south side. There is a spring that covers possibly 50 yards long that there is water at all times of the year, but the right of way of this proposed road would come just about where the water comes out, just to the south of the water holes. At Sweetwater Canyon the road would not prevent the cattle pasturing on the north side of the road or from any water which they could get on the south side. The next place where there is water for cattle on the ocean side of the road is Malibu Creek, where there is a lake, that there is water on either side of the proposed road, at all times.

That is on both sides of the road. The proposed road there would not keep the cattle from any water they wanted to get. The next point where the water is on the south side of the road is at Marie Canyon. That goes dry in the summer season. In the dry season it would not keep the cattle from any water on the south side which they could get in the summer. There is water up the canyon. There is another case that the springs are right close to where the road comes. I couldn't state whether it is on the upper side or lower side. I don't know, as a matter of fact, whether the road at Marie Canyon would prevent the cattle getting water near where the road is now. The everlasting spring is—in wet seasons there is water running in the canyon, but in the dry seasons there is springs that is right near the right of way. There is no water running in Marie Canyon during the dry months. At all times of the year there is water on both sides of the road where it crosses Marie Canyon or in that vicinity. The next place going west where there is water on the south side is Puerco. That is the next canyon beyond Marie; the canyon is entirely dry in dry seasons. At Puerco the proposed road would not prevent the cattle from getting any water which they now could get south of the location of the road. At present our fences are on either side of Puerco and

3394 Marie Canyon, so cattle can have full access all the year around to the entire canyon. We get water for cattle next west of that point at Corral Canyon. There is a lake on the south side of the road. That lake is wet all the year around; that is the water that the cattle drink. There is water at the north of the proposed road also at certain seasons—I believe last year it was dry. That is not a usual circumstance; but in dry seasons it forces the cattle to come
3395 down to this lake on the south side. Continuing west from Corral, we next find water south of the road at Sosto Canyon; that is, running water, spring water, running streams. The water in that canyon flows all the year both above and below, that is, north and south of the proposed road. It would be almost impossible for cattle to come down to Sosto Canyon from the west; we call it south of the road.
3396 Irrespective of the proposed road, the same physical condition would apply to the cattle coming down Sosto Canyon from the south part. There is a big mountain, a steep bluff, and it is almost impossible for cattle to come down. If this proposed road goes through with the fence, it would almost keep the cattle from coming off of that mesa and mountain down to Sosto Canyon. This is Sosto Canyon and this is the mountain here (indicating on map, Exhibit 6). The mesa is here and the road comes

3397 along here. It would be west of this road that there is a big, high mountain.

Mr. Burnell: The witness indicates, Mr. Anderson, a location on the map to the west and south of the proposed road where it makes rather an abrupt turn to the north at the point marked on the map with red pencil "Solstice Canyon."

Mr. Anderson: As indicated, indicating the bluff he refers to, or mountain, rather.

3398 Mr. Burnell: Yes. That would prevent cattle coming from the south.

A. From the south. As we understand the questions, all between the road and the beach is called south. As to the character of the land just west of this bluff or mountain, it is approached by a divide or backbone, as we call it, between Latigo Canyon and Sosto Canyon, or a branch of the Sosto Canyon that the

3399 proposed road leads up. The character of Latigo Canyon in regard to being a feasible place for cattle is that it is very, very steep. The branch banks are steeper than Solstice. There is good pasture land down to the branch of the bluff, but the Sosto or Latigo bluffs are very steep. At the present time when we have cattle pastured on that part of the ranch which lies to the north of the proposed road, those cattle to come down to the water on the south side of the proposed road at Sosto Canyon,

1137

3400 go up a trail that we use now that leads right up to the survey of this proposed county road, leading up the side of the Dry Canyon. The cattle from Sosto Canyon, most of them, go up this road to get up on this mesa or these hills, which trail is right in the right of way of that survey. That is where the trail was started. The cattle, judging from my experience, would make their own trail, if the mountain is not
3401 too steep, but it is hard to get cattle to make a trail up a mountain. If they were up there and the trail was closed, they would get to water; they would go after water; it might cause them to go a mile further is all. It is a common thing for cattle to be pastured where they would have to go a number of miles to water, for range stock; but for beef stock, you have to have them close to water to have any success in getting them fat and ready for mar-
3402 ket. We fatten in the region of Sosto Canyon, in the spring, but not at the present time. Now they are range cattle. Continuing west from Sosto, we next find water south of the proposed road at Latigo Canyon. The source of the water there is some small springs in a deep canyon, south of the proposed road. Where the proposed road crosses Latigo, it is not very steep. The road crosses in a flat, or Latigo Canyon, where it would be impossible to put a bridge unless you made a fill. Going west, you

3403 come into Escondido Canyon. You find water there, but the road runs up Escondido something like a half a mile, right at the edge of the bluff, keeping the cattle from coming down to the water from the south. Cattle, along on that divide between Latigo and Escondido, we have to go west to get water out of Escondido Canyon, south of the road, you would have to follow the fence over half a mile from where
3404 you come down and the cattle would have to go a half a mile up and a half a mile back. That would be a mile a day, where, if it was not for the road they could get to water in a couple of hundred yards. I think that that extra travel would materially affect the condition of the cattle. They get enough exercise getting their feed, but take poor cattle, when they have to make a mile extra travel every day, when a cow wants a drink she starts for water. We haven't
3405 any poor cattle on the Rindge Ranch at the present time, but I have seen them poor, though. As a rule we don't have poor cattle. We have succeeded in keeping pretty good cattle.

Q. Then when you eliminate the poor cattle, which you say you don't have, and taking only the good cattle, do you think that this sort of animals would be injured by this little trip of a half a mile to water.

Mr. Anderson: It is a half a mile up and a half a mile back, which is a mile and the round trip would make it a two-mile trip.

3406 A. It is a good way to make cattle poor.

Half a mile up and three-quarters of a mile back they would have to go; that would be a mile and a quarter altogether. I think that that would injure the cattle, keep them from feeding, and it adds to the taking off of the flesh that they are putting on, and takes up their time. Part of the pasture at the present time is on the ocean side of the road. The cattle there would not have to do all this traveling; but our late
3407 summer pasture is on the north side of the road in the foothills, where the wild alfalfa and the bunch grass is. Those cattle would have to travel a mile and a quarter to get water. The next water south of the proposed road is at Ramirez Canyon, an underground lake, the water comes up near the ocean. That is a lake all the year round—water there, no. There is no water north of the proposed road at that
3408 point only piped water in the dry season. That is good water for cattle. When the pipe is connected, there would be water north and south of the road. At Ramirez Canyon the proposed road cuts us away from the corrals and the round-up pens.

Assuming that the bridge has a 17-foot clearance and the width corresponding to the width of the canyon, I would think, for the width of the canyon, 17 feet would be good enough, so that there would not be anything to prevent the

3409 cattle going back and forth, as the canyon is sufficient to let all the water pass down the canyon. I understand that the 17 feet is from the bottom of the canyon to the bottom of the bridge. Assuming the bridge to be as stated, the only thing to prevent the cattle from passing through there would be the rocky bottom. Cattle go over rocky hills north of the proposed road; but if the cattle had to pass over the creek bed, they get sore-footed. In the hills they are care-
3410 ful where they put their feet.

Again, assuming the height of the bridge to be 17 feet and the width three 38-foot bends, I would not regard the matters previously testified to be affected by the change. It would make a much better opening for moving cattle than what we supposed.

With a bridge of the sort at Ramirez, there would be nothing to prevent the cattle passing
3411 back and forth of their own will. There would be an interference in moving herds of 500 or 1000. The largest number of cattle we have on the ranch at the present time is 1050. I think there has been something over 1700 head there, which is the largest number we have had on the ranch at any time in the last three years. At the branding time, we bring everything in at the spring and fall branding of the calves. Then everything is put into one bunch and they are kept at Ramirez Canyon. For the purpose

3412 of the round-up it would be necessary to drive the cattle through or under the bridge where the road crosses Ramirez Canyon, to get them to these corrals. This canyon happens to be so that they can travel all over the banks. There would be difficulty for an experienced cow man, or one or two cow men, in driving these cattle through and under that bridge. It would take a long time to get them all to go through this
3413 small space. As it is, we start them down the canyon, as I stated before, and the cattle go of their own accord from one bank of the canyon to the other, which is probably a quarter of a mile, towards the corrals. It would take us three or four hours longer to bunch all the cattle that we have ever had on the ranch, 1700 cattle, and to drive those 1700 cattle to the branding or round-up place by driving them under the bridge at the canyon. That is twice a year. We
3414 brand twice a year. At the present time, and by the present time I mean the last two or three years, when we have our round-ups, we collect the cattle, for instance, up at the western end of the ranch, Nicolas Canyon and Arroyo Sequit, and Trancas, and all those other canyons and bring them down to a round-up point at Ramirez Canyon. We get them down to Ramirez Canyon from Trancas and Arroyo Sequit and Lachusa Canyon, if there is crops growing in the fields, we bring them on the beach at

all places possible; otherwise we have to take them up in the canyons and around to get around the fields. There is nothing in the proposed road or proposed crossing at Ramirez Canyon that I have spoken of, that would prevent us bringing the cattle along the beach as we have in the past. Only we bring the cattle and hold them in a pasture just north of the proposed road. There is a small pasture that for two or three days we put cattle in the pasture. So that if we bring them down the road we would have to take them up north of the road to get them in the pasture. We are still talking of cattle to the west of the ranch. When we bring them down to the round-up at Ramirez Canyon we do not follow the beach around Point Dume. If there is fields at the Point, we take them up Zuma Canyon, and across the pasture north of the fields, and that pasture leads right into Ramirez pasture. Then we could still do that without crossing the proposed road at the Ramirez Canyon; take them along and put them into the corrals. It is a fact that the bringing of the cattle to the round-up point—we would bring them down the road as it is at the present time—as it exists on the ranch at the present time, if the fields would permit; if the crops are harvested, we bring them down the road. The road leads through fields, and in moving cattle from the upper end, you speak of this proposed

county road there, we would have to cross that road four or five times, bringing them from the upper end, unless we would bring them down the public highway. There is nothing to prevent bringing them down the public highway, except that it is very dangerous to bring them down among machines and the like. That would depend on whether there was very much travel on it. Still speaking of the round-up time, we get the cattle from Malibu Canyon and Corral and Marie and Carbon Canyon and the other canyons lying east of Ramirez by taking them through the mountains. Occasionally we take them along the beach; when we want to drive a bunch through we drive them right down the beach. That is quicker than through the mountains. When we are rounding up, we start at the east and get everything in the mountains and drive them west. Figuring the value of time, we would possibly save eight hours by bringing them through the mountains along the beach. If we are bringing them from the Malibu to town, we take them down the beach; but if we are gathering cattle that are collected around in the mountains we keep drifting them west until we come to Ramirez Canyon. In bringing them from the ranch to Ramirez Canyon, we would have to get them from both sides of the proposed highway. There would be nothing to prevent us from getting them from

3421 both sides and taking them down along the beach, except that all the cattle gathered on the south side, we would have to take them across the highway because the highway comes out of Escondido Canyon and enters into the fields east of Ramirez Canyon, so that they would have to cross the highway. We possibly could bring them right down the highway, but you would have to bring them in from both ways. In that
3422 case, there would have to be outlets made at Ramirez Canyon to get them out. In other words, gates in the fence along the highway. At the present time the road that actually exists and is traveled on the Rindge Ranch is not that road fenced on both sides at Las Flores Canyon and Ramirez Canyon. The parts that are fenced are on Malibu Flat and the alfalfa fields; there are places fenced on both sides; possibly half a mile. When we come to Zuma Canyon, shown on
3423 the map as Dume Canyon, we find water south of the location of the proposed road, the lake. That portion of Zuma Canyon where the proposed highway crosses is a valley of alfalfa.

Assuming that there is a 160-foot pile trestle bridge with a clearance of 9 feet, I would say where the trestle crosses the canyon that one side is precipitous and the other is not. Nothing to prevent cattle going up and down, with the exception that it is very rough on the bottom of the canyon, but that rocky condition would be

3424 obviated by taking up the rocks. They are small rocks. They could be shoveled out of the way.

At the next canyon to the west, Trancas, there is the water south of the road, a lake, fresh and salt both, when the high tides get up into it. On the north side of the railroad, we have a windmill and a well. That windmill and well is north of the proposed road, and produces water at all seasons of the year. There
3425 are three canyons between Trancas and Lachusa. Encinal Canyon is the next one with water. There is something at that canyon which would prevent the cattle from going under the bridge proposed there; it is very steep, with a deep gulch under it where the road crosses it. The bottom of that gulch is rocky. There is some big boulders there, and the walls are very, very steep. The judge and jury may remember passing a new bridge. It is very steep on either
3426 side. The steep walls on that canyon are not towards the ocean; just below where the road crosses, probably 50 yards it slopes off. The location of the proposed road at that point, relative to the present road, is right near it, about 30 feet north of it. The same conditions obtain at the point where the present road crosses that canyon as where the proposed road crosses; there are steep banks. At the present time the old road is not fenced. The cattle go up or down the canyon. If they were forced

3427 to go from one field to another and be forced to come under a bridge, it would be almost impossible to put them through. You would have to make roads for them to get down into that canyon. I know approximately the expense of making a trail or road sufficient for the cattle to pass down under the bridge; probably five days for one man to dig out a place sufficient for them to go under at $3.50 per day and board,
3428 and then the cattle would be able to pass back and forth under the proposed road. It would not be as convenient as to let them pass at will. It is just a matter of convenience, even after it was fixed.

The next canyon just east of Lachusa is what I call the Bridge Canyon. The nature of that canyon at the point where the proposed road crosses is very steep. It crosses pretty near the same place the present road crosses. The
3429 conditions we would have in respect to the crossing under the proposed bridge across Lachusa Canyon would not be the same conditions that we have at the present time in regard to that road. If the cattle were forced to go down under it, you have got no coming out place. The road is not fenced at the present time. There is no water at the south side of the road at Bridge Canyon. It is all north. There is nothing at Los Alisos Canyon to prevent the cattle going under the bridge; they can pass

3430 under the bridge; there is water on both sides of the road. Lachusa Canyon, it is impossible for stock to pass up it; it is so steep it is impossible for stock to get down in or out of it. The banks are steep to that extent, something like 150 yards; then they are less steep, it slopes to one side. It has been impossible for stock to pass under the present bridge.

Assuming that the bridge dimensions, that the county proposes to put there, is of sufficient
3431 height, that they would be able to pass under it, it would be a bridge with a clearance of 21 feet. I am talking about Los Alisos. There is nothing to prevent the cattle from going under the bridge. I think they could pass it all right.

There is no point where the proposed road crosses Nicolas Canyon that the cattle could not pass; it goes dry below the road in dry seasons. The sides of Sequit Canyon are not steep below
3433 the proposed road. Sequit Canyon where the proposed road crosses is practically level, there is very little banks to it at all. The principal detriment to the ranch in my opinion is the fact that it is divided in two from north and south, by the proposed road which traverses it, and the additional expense. The present road, the one that the court and jury went over, now divides the ranch from east to west, but it is not fenced; the stock runs across the road. It is a private road and nobody travels over it but

3433 the people on the ranch, so it is not necessary to fence it. They close the gates and help care for the stock. Automobiles traverse it.

We plant beans on the ranch in May or June. They are cut the latter part of the July or first of August. During that time we do not allow cattle in on the bean fields. After the beans are cut, the cattle are turned in, the beans are taken away and the straw hauled in for feed, or left in the field for feed, and the cattle are turned in.
3434 We thresh in August; this year it was later, but they are supposed to be threshing in August or September. We don't let the cattle in until we finish the threshing. That takes us up to August. We let the cattle in for sixty or ninety days after threshing. It depends; 60 days is the contract with the bean growers, longer if necessary. We could keep them in there ninety days. The amount of feed determines the neces-
3435 sity. This year they are in the field now (November 26, 1918) and will be for thirty days more. We do fall plowing. The bean fields are leased. I have nothing to do with that. The bean fields are plowed in October, November and December,—November and December is the usual time. During the time that the plowing is going on the cattle are allowed in the bean field to graze the barrancas and hills that is included in the fields. Sometime some years when we get to plowing there is beans left in the fields.

3436 There is a good deal of foothills that is included in the fields. At the present time, above the Trancas the fields and mountains all run into one, and we cannot pasture when the bean crops are in, so that leaves lots of dry feed in the hills to be pastured for winter pasture while we are pasturing the fields. There is some land that is used for the raising of beans that is not fenced off from the pasture land. That condition ob-
3437 tains south of the proposed road. The railroad line or track that runs through the ranch does not interfere with the cattle to any great extent. They run through one pasture or field. Of late there have been no cars running on the track to interfere with the stock, but where there are cars running it would interfere with cattle grazing at certain parts. There is only about a mile of it goes through the fields.

Redirect Examination

3438 By Mr. Newby:

The railroad right of way goes through only one field for a distance of about a mile and a half, I judge. The railroad right of way is not fenced either. With the exception of this field that I have mentioned, it runs through the extreme southerly portion of the ranch. Approximately the acreage south of the railroad right of way is, I judge, something like 200 or 225 acres of cultivated land, and some 50 or 60 acres of the point. Indicating the cultivated land south

of the railroad right of way on Defendant's Exhibit 6. It comes across from Corral Canyon and comes across and comes almost down to the Point here (indicating). Say from a Corral Canyon to a point about a quarter of a mile west of the extreme point and then goes down to the beach again. The land I refer to is the land south of that place, south and east. Probably something over 200 acres; probably 225 acres up here and here, and this point is sand (indicating). That is not in cultivation. There are some 40 or 50 acres there. That is in Ramirez Canyon, on the point. It comes out in the field at Ramirez Canyon. Tracing approximately upon the map, this is the mouth of Ramirez Canyon. It comes right out of the mouth of Ramirez Canyon, almost west, and it bears off across here and comes close to the point down here (indicating) and keeps across here about like that (indicating). I have used a black pencil and marked that line with the letters "R. R." —that would indicate the railroad line. We have marked the black line with the letters "R. R.", indicating the approximate place where the right of way goes across Point Dume, and south and east of that line is cultivated land of approximately 225 acres, and uncultivated land 50 or 60 acres. This is from Ramirez Canyon to the bluff. This is all in cultivation, and this is sand and is not in cultivation right at the

3442 extreme point (indicating); the latter part being the extreme southwest corner of the point. With reference to the plowing on the Malibu Ranch, I said the time of the plowing of the bean field depended on the amount of feed on the land after the harvest, and under the particular contract that I have reference to, the period is 60 days after harvesting, with the privilege of a longer period if the company thinks it necessary,
3443 so that there is an absolute period of sixty days after harvesting for grazing purposes on the bean land.

I say that the present road is not fenced. The general public does not go over that road; there are gates across the eastern end of it which are kept locked. There is no one allowed in there without a permit. At Bridge Canyon I don't think there is any water on the south. There is none at dry season. It is just a spring. I
3444 think the proposed road crosses right where the springs are. That would have the effect of destroying that as a watering place. If there was a bridge there stock would not go there to drink under the bridge anyway.

Q. You have been asked frequently upon cross-examination if it was possible for cattle to be passed under the respective bridges the sizes of which have been described. I will ask you if the difficulty of passing cattle under the

3445 bridges is in passing them under or gathering them.

A. I would say in bringing a herd of cattle under the bridges they are naturally afraid and they are hard to get started. In case you had a bunch there, going into the corral, you get them started under the bridge and an automobile comes over the bridge, it is goodbye cattle. They are gone everywhere. Let a machine go
3446 over them and you could not get enough men to hold them, with the possibility of a stampede. That is a matter of common knowledge. If they get scared at that bridge once you cannot get them under it again. The effect those bridges and the road have upon cattle that ordinarily go from pasture to water, of their own volition, without being herded, is if there isn't a bunch of them they will whirl around and look, and don't get so frightened. They will
3447 pass back and forth after they have the trail made and get accustomed to going along there. They have to form these new habits. So far as the cattle being fattened for the market, exercise is not very good for them. You can not fatten beef and keep them traveling. That is what I meant by saying it would have a bad effect on the cattle, on these cattle or any cattle. I contend that if they have to walk a mile after water, they will walk off just that much flesh and at certain seasons when the grass is short,

3448 they are pretty busy trying to get enough to eat, and if they had to climb the mountains after water, they never will get fat. We never move poor cattle. If the feed is getting short we don't move them, because they always lose flesh and when you move them you are apt to lose some of the cattle. As to horses and mules passing under the bridge, they are very shy; when they get under there they usually run through. It
3449 would have the same effect if you put a bunch of young horses into the corral and a machine or a wagon went over the bridge, they will get away.

J. C. PATTON,

recalled on behalf of the defendants, testified as follows:

Direct Examination

By Mr. Newby:

I have gone over the Malibu Ranch carefully
3450 for the purpose of estimating the various kinds of land on the ranch, that is, the pasture land and the tillable land, and the other kind.

Q. Please tell us in acreage the various types of land upon the Malibu Ranch, dividing it, if you may, as to the part on the May K. Rindge portion and that on the Rindge Company portion.

A. You wish the acreage or approximate acreage of pasture and acreage of cultivation and acreage subject to cultivation?

3451 Q. Yes; and the character of the cultivation, if you know.

A. I have a little memorandum of the different pieces and what grows on it. I made that memorandum myself, after a careful investigation of the matter.

I will begin at Las Flores Canyon and go west and give in detail approximately the amount of acres in pasture and what grows on this. I have
3452 made arrangements here for three different things in each acreage of different grasses that grows—different feed that grows,—for stock. I have divided it between the canyons, and also what grows on the different crops, on the different fields. We will say from Sweetwater to Las Flores, 900 acres of pasture, description open hills, wild oats, clover, carissa grass, big bunch grass which grows on that portion of the pasture. We find in the length of the ranch dif-
3453 ferent sections of the ranch growing different feed and for that reason I have made this provision for the different locations on the ranch. There is no land in cultivation at the present time from Las Flores to Sweetwater Canyon. From Sweetwater to Malibu creek there is about 300 acres of pasture land, description mountainous. Wild alfalfa, acorns and carissa grass. There is 12 acres in cultivation in walnuts, lemons and alfalfa. East of Malibu Creek, 50 acres on the mesa of barley land. Grain, milo

3454 maize. That is east of Malibu Creek. From Malibu Creek to Marie Canyon pasture 460 acres, mountain and mesa, hills and open flats on the hills. Wild alfalfa, wild oats and bunch grass. From Malibu Creek alfalfa, corn and potatoes 55 acres. Beans 80 acres. On the mesa, beans and milo maize 100 acres. That is up to Marie Canyon. I have 1957 acres of Mr. and Mrs. Rindge. That is up to the western boundary of Mrs. Rindge's land. From Marie
3455 Canyon to Corral Canyon, 500 acres of pasture land, open hills, burr clover, wild oats and wild alfalfa. 180 acres table land in beans. From Corral to Sosto Canyon 600 acres open hills and burr clover. The cultivated land between the two last canyons is about 180 acres. Corral to Sosto Canyon open hills, burr clover, wild oats, wild alfalfa. Very good pasture. No cultivated land. From Sosto to Escondido Canyon,
3456 740 acres, hills, wild alfalfa and acorns and wild oats. From Latigo Canyon, the cultivated land that starts there is 100 acres. This is from Sosto to Escondido. No land in cultivation excepting 100 acres. East of Escondido to Ramirez there is 250 acres in cultivation in beans. From Escondido to Zuma, 1500 acres pasture, open hills. Burr clover and alfalfa and wild alfalfa and various pasture. Heavy black soil. Open prairie, hills. 250 acres of cultivated land, Escondido to Ramirez in beans. It

3457 includes everything up to Ramirez Canyon, from Ramirez to Zuma Canyon 700 acres in cultivation, rolling hills, oats and barley and milo maize. In Zuma Canyon 40 acres alfalfa, in addition to the 700. That is east of Zuma Canyon. West of Zuma Canyon there is about 30 acres in alfalfa. That makes in that neighborhood between those points about 700 acres. From Zuma to Las Trancas Canyon 600 acres in hills and pasture; 600 pasture. It is a hilly, sloping
3458 country, from the top of the divide sloping toward the ocean. Wild alfalfa and burr clover. 400 acres of cultivated land in beans and barley at Las Trancas Canyon. From Las Trancas to Encinal Canyon, 500 acres in pasture, hills and table, wild oats, wild alfalfa and bunch grass. 150 acres of table land in beans and 85 acres of table land and beans up to Bridge Canyon. From Encinal to Lachusa 800 acres in pasture,
3459 open hills, wild oats, burr clover and alfilaria. This 85 acres is included from the Encinal to the Bridge Canyon. From Bridge Canyon to Little Lisos, 50 acres of alfalfa. Bridge Canyon is the little canyon just west of the alfalfa patch at Lachusa. From Lachusa to Latigo 450 acres of pasture. To Latigo, Little Alisos, it is known; 450 acres high ridge alfalfa. No cultivated land there with the exception of the 50 acres included in the alfalfa, which I have already mentioned. From Latigo to Sheep Canyon

3460 there is 195 acres in cultivation, slope land, beans. That is the first canyon west of the Nicolas Canyon. West of this there is new land that has been put in cultivation since the case started. I did not give the pasture land there from Lachusa to Sheep Canyon. I have the pasture all included from the Latigo or from Little Alisos to the county line. 3500 acres open hills, wild oats, burr clover and carissa. From Sheep
3461 Canyon to the county line there is 60 acres in cultivation. My total summary of the ranch is 10,650 acres of pasture land and 2630 acres of farm land, land in cultivation. I wish to say that my figures may be off a little. I had nothing only my own experiences in handling this ground and covering this ground and measuring up the field lands. I made these figures absolutely of my own accord.

The lemon orchard is at Malibu camp; right
3462 near Malibu camp. In the farm land, amounting to 2,630 acres, I have included all of the land on the entire ranch that is in cultivation, irrespective of whether it is in orchard, hay or beans, with the exception of the lands that is up near the Ventura county line that has been put in this winter, in the last month or two, something like 60 or 70 acres and it will amount to about a hundred acres when they are through in that portion of the ranch, in the Sequit Canyon, in the extreme western portion of the

3463 ranch. I do not know accurately how many acres in there is in alfalfa, something like 70 or 80 acres I presume, something over 50 acres at Malibu and 50 acres at Lachusa, about 175 acres altogether.

Cross-Examination

By Mr. Burnell:

The amount that has been changed from strictly pasture land to cultivated land since
3464 November, 1917, is about 130 acres or 150 acres. The tendency has been to withdraw the land from what is called the pasture column and put it into the cultivated column. Of this land that has been taken from pasture and put into cultivation there is something like 50 acres in Winter Canyon put in this last winter. That makes an additional amount to a little field in Winter Canyon. There was an additional amount up near the Trancas Canyon, Encinal,
3465 between Trancas and Encinal, there was some 40 or 50 acres added to those fields. In making my summary in which you arrive at the figure of 13,280 acres, I did not include the whole area of the Malibu, just the grant. Nothing in Ventura county or outside of the Malibu grant. A portion of the Malibu ranch, meaning the portion in the heavy purple line on Exhibit 6, is beach land, where the water comes up practically to the bluff. There are places where there is considerable area of beach sand between the

3466 waters of the ocean and the land that is used for cultivation, or pasturage. Wherever I find this beach sand, whether it is next to pasture land, or next to cultivated land, I have not included it in that particular part in the cultivated crop, but I have in the pasture crop with the exception of two places. The way I got it in my acreage of cultivated land was lands that is actually in cultivation by measurements and by drills of planting grain, and everything else
3467 I put in the category of waste land, with the exception of, I will say, from Zuma to the Trancas there is probably a little waste land there, what you term as beach sands, that was not included. I think with that exception, everything else is included. In the northern portion of the ranch, the portion that lies up near the Ventura county line, the line usually in most places comes just below the crest of the
3468 hills. The hills all slope towards the ocean. In a few instances, the line reaches to the topmost pinnacle of the first range of mountains. The higher portion of the mountain land where you cross the pinnacles of the mountains is fit for pasturing cattle on, as far as the line goes in most places. Some of those mountains rather steep, but they are open in most places. I believe I am safe in saying in all places except where the line is down at the Malibu. There may be some places there where it is not very

3469 good. I think that cattle could pasture all over practically all of those hillsides. As to the sides of some of these canyons across the ranch, the cattle cross over most all of them, on the hillsides. There is exceptional places where it is difficult for them to go, and some places they don't go. I can mention one or two instances of places where it is almost impossible for cattle to go, and they seldom go. One place is a steep
3470 bluff just at the west of Sosto Canyon. The mountain is very steep on the east slope of this hill, and it is almost impossible for cattle to go up and down it. The east slope of this high ridge I spoke of between Lachusa Canyon and Little Alisos Canyon. It is very difficult for stock. There are places where it is difficult for them to go, but if the feed is good, they graze along slowly and work their way over lots of places where they would not go if it was not for
3471 reaching out a little farther to get a little more feed. They will go wherever they find the good feed, if it is possible. That does not necessarily apply when they want something to drink. They go different routes when they want to go for water. They usually select some route or place along in that direction until they become thirsty, and they probably they are close to the water and they pick up their head and walk on in and get a drink, and usually come back a ways and start grazing and feed on up the mountain. As

3472 a usual thing, around near the water places the feed is short, and they graze as long as the feed is good, and then they probably walk down to water. Alisos Canyon is a very steep canyon with very steep walls. On the extreme walls the cattle do not pasture up and downs the walls of the canyon. After you get further up the canyon they do. The cattle graze about that part of the canyon that lies between the canyon
3473 and the present traveled road. They go up and down those walls. The walls are not so steep between the canyon and—in places they are, but the majority of places they walk along. There are places they go and places they cannot go. They follow up and down those trails and graze around on the sides as far as they can. For a certain distance there is places along the canyon it is almost impossible for them to get to, but a cow can usually go where the grass
3474 grows in grazing.

Q. Then I take it the testimony at the former session is that the only place that a cow cannot go with facility is under a bridge. Is that right?

A. That is one place she won't hardly go. There is a difference in cattle. Take dairy stock or home-raised, as we call them, milk-fed calves, they will go most any place. Take range stock that is raised in the mountains, they are very shy of any obstacles in the way of timbers

3475 or bridge, or anything like that. They are very shy of it. The steer is the most shy of either of them. You take the Arizona and western steers, raised out on the desert, they very seldom see a man. You would have a nice time getting him under the bridge. Some of the Malibu cattle are wild, very wild. They come in contact with human beings occasionally. That applies to the bulls also. Part of the land that
3476 was formerly pasture land has been employed in laying out the road which now runs through the ranch from Las Flores to the Ventura county line. I believe about a mile and a half. The road through the pasture is not in use at the present time. It has not been completed. That is from Los Trancas to Steephill Canyon. That was built in January of this year. That is not part of the main road which runs from Las Flores through to the Ventura county line,
3477 the road that we traveled over when we were up there. It is a road I was building to stay between the fields and the foothills, it was our intention to build a road and to keep it back of the fields, dividing the pasture and the fields from Zuma to the upper part of the ranch. That was taken from the pasture land. The main road which runs through the ranch which we traveled over, was taken from the pasture land in places and from the cultivated land. I couldn't say when that road was built. It was there

3478 when I came on the ranch. I have been there about 19 months. There was an extension of the road built from Nicolas Canyon on to the Ventura county line and beyond since I came. That is a part of the main road. It had at one time been a road, over parts of this, and there was parts of the road built new. We repaired the old road and made new, when it came into contact with the road we were building, but I built the road back of the fields from Nicolas
3479 to Sequit. That was done in November and December, 1917.

By the Court:

The old road was rebuilt from Sequit to the Ventura county line?

A. Yes, the same right of way that had been used in years previous.

By Mr. Anderson:

Since I have been on the ranch there has never
3480 been any road, either the old one or the one that was rebuilt, at the point where it crosses the Ventura county line, excepting the road that is there now.

By the Court:

I mean that the road is in the same place now as it has always been, with the exception of Nicolas to Sequit.

By Mr. Burnell:

I came on the ranch about May 20, 1917.

3481 F. B. SCOTTON,

recalled in behalf of the defendants, testified as follows:

Direct Examination.

Mr. Anderson: If the court please, we have here a map which purports to be a map of the portions of the Malibu Ranch showing cultivated fields, survey made by C. R. Brawner, civil engineer, 402 Higgins Building, Los An-
3482 geles, California, December, 1917, ending at Ramirez Canyon, and embracing the cultivated fields east of Ramirez. And Mr. Burnell will stipulate that if Mr. Brawner was on the witness stand he would testify that the surveys was correct, and that the parcels shown contain the amounts of acreage as shown on the map.

Mr. Burnell: So stipulated.

Mr. Anderson: We will not introduce this map as such. We will simply have Mr. Scotton
3483 take it and interpret it into the record. Mr. Scotton, I will show you the map that I have just referred to, and will ask you to take that map, beginning with the parcel at the eastern end of the map, and take each parcel separately, and give the amount of acreage and describe as near as you can where it is located on the ranch.

Mr. Burnell: Just a suggestion, wouldn't it be better to have the document introduced at least for identification, so the record will show what he is referring to?

3484 Mr. Anderson: Yes, I think so. We have no objection to it for identification, and will produce it at any time you wish it.

The Clerk: Defendants' Exhibit 23. (This or a copy of this is one of the exhibits to be certified up by the clerk.)

Mr. Anderson: Now, take Exhibit 23 of the defendant, and proceed in the manner that I have suggested.

3485 A. There are three parcels of cultivated land. Commencing at the south, one piece contains 6.2 acres, south of the railway. Immediately north of the railway there is a parcel containing 15.8 acres, which extends northerly to the present ranch road. The third parcel between the present ranch road and the base of the hills to the north, contains 73.6 acres. These three parcels are west of that certain fence on the Malibu Flat that separates the alfalfa and vegetable 3486 lands east of that fence from these three parcels that I have just described. They are west of the Malibu Creek. The proposed right of way of the so-called main road passes through the third parcel, that one containing 73.6 acres. Commencing on the eastern end of sheet No. 2, this parcel extends from the west bank of Winter Canyon to the east bank of Marie Canyon and contains 90 acres. The proposed right of way for the main road intersects the southwest portion of said block of 90 acres. The next parcel

3487 between Marie Canyon and Puerco Canyon contains 24.6 acres and the proposed road intersects the southerly portion of the parcel. The next is between Puerco Canyon and another canyon not marked, immediately west of Puerco, and east of Corral. This parcel contains 52 acres. Portions of the southerly part of the lot are intersected by the main road. The next parcel is just east of the canyon last mentioned and
3488 contains 13.2 acres and the portion of the southerly end of that parcel is intersected by the proposed road. There was a gulch to the west of that 13.2 acres and a second gulch marked upon this map to the west of the first gulch and between those two there is a parcel of 4.6 acres. I think the road does not touch that parcel. Between the last mentioned gulch and Corral Canyon is parcel 9.4 acres across through the southerly and westerly portion of which the
3489 proposed road does pass. I have now sheet No. 1 which commences to show areas of land whose easterly boundary is Latigo Canyon or just west of Latigo Canyon, there being a stretch between Corral Canyon and Latigo Canyon of a mile and a half or two miles. The first parcel is south of the present ranch road and contains 9.3 acres. There is a parcel north of the road containing 20.1 acres and west of these two parcels there is a gulch and west of the gulch there are two parcels of land, one south of the road containing

3490 10.2 acres and one north containing 24.2 acres. West of these two parcels is the Escondido Canyon. The proposed road does not pass through any of those four parcels. West of Escondido Canyon up to a gulch that extends through this cultivated area there are four parcels, three of which are south of the present ranch road, the most easterly containing 18.8 acres, the middle one containing 10.9 acres. The
3491 westerly one contains 8.7 acres. The fourth parcel being north of the present road, the present ranch road, and containing 46.4 acres. The proposed main road does not pass through any of these parcels. West of the last mentioned through gulch there are two parcels up to another gulch at the northern end of which is a fenced area marked "Spring." One parcel is south of the present ranch road and contains 11.9 acres. The parcel north of the present
3492 ranch road contains 25.8 acres. The proposed road does pass through the northwesterly portion of the 25.8 acre piece north of the road. Commencing now at that gulch shown on sheet No. 1, at the head of which is a spring enclosed with a fence, there are seven parcels. Of the three south of the road, the most easterly contains 8.1 acres, the middle one 22.8 acres, and the westerly one 25.1 acres. The proposed road does not pass through the easterly or central one of these three parcels, but at the north-

3493 western corner of the last mentioned parcel containing 25.1 acres, the proposed road does pass through a portion of it. Of the four parcels north of the present ranch road, the most easterly contains 24.7, the next one contains 26.8 acres, the southwesterly one 21.7 acres, the northwesterly one 12 acres. The proposed road passes through three of these, being the 24.7, the 26.8 and the 21.7 acres. This brings us to the fence on the eastern bank of Ramirez
3494 Canyon. That completes this map.

I am familiar with the lands that are in cultivation on the portion of the ranch that is known as Mrs. Rindge's portion, which is not included on that map, and with the acreage. I can describe them: West of that certain fence testified to by on sheet 3 of the exhibit 23, there are several parcels of cultivated land, the most southerly containing about 41.9 acres, which is
3495 on the west side of the Malibu Creek. It is cultivated to alfalfa. On the east bank of the Malibu Creek there is a parcel containing 3.9 acres, which runs practically from the top of the sand hill back to and a little north of the round corral on the east bank of Malibu Creek. The proposed road passes through this 3.9 acre piece. It is a strip running northerly and southerly, and the road runs through three-quarters of its length and through the round corral, and from there crosses the Malibu Creek in a west-

3496 erly direction. I am referring to the proposed road. The proposed road does not pass through the 41.9 acres first mentioned as being the alfalfa. North of the 41.9 acres is a parcel of 48.24 acres through the southerly portion of which the proposed road runs in an easterly and westerly direction. Of this land mentioned, 48.24 acres, there are several pieces of cultivated land the areas of which total about 50
3497 acres through which the proposed road does not pass. That is cultivated to grain. That is all the cultivated land near which the road passes.

Q. I want the entire cultivated area in the canyon other than those shown on the 23 acres.

A. North of the last two areas of about 50 acres, is 28.24 acres, and there are several parcels of land around about the Malibu camp, the most easterly of which is in barley and corn and contains about 15 acres. North of the camp
3498 there are several fields totaling about 10 acres additional. West of that is a walnut orchard of about 6.89 acres and south of that there is an alfalfa field of about 5 acres. South of that there is a lemon orchard of about 7 acres, lemons and other fruit trees, west of Malibu Creek, and directly west of the lemon orchard there is an alfalfa field of about 4½ acres. Up in the Malibu Canyon a short distance from the walnut orchard there are fields that have been cultivated and planted to vegetables and hay total-

3499 ing about 12 acres. Coming now to the southwest corner of Malibu Flat there is a field containing 12½ acres of hay and a second field containing 6.6 acres of hay. West of that, over the little ridge in the bottom of Winter Canyon there is about 22 acres planted to corn this year and vegetables. I think that covers them all. I have been familiar with this ranch seventeen years. During the time I have been familiar
3500 with it I have had occasion to study the different kinds of land on this ranch and their adaptability to different purposes. The approximate amount of arable land in what is known as Malibu Canyon, which includes the Malibu Flat, is something in excess of 400 acres. I know the amount of arable land in Zuma Canyon, from the ranch line down to the ocean; that is about 120 acres. I know the amount of arable land in Trancas Canyon—35 to 40 acres. Also
3501 in the Sequit Canyon, about 50 to 60 acres. There are other canyons which between the canyon sides have arable land, besides the ones I have mentioned, Malibu, the Zuma, the Trancas and the Sequit; they are Corral Canyon, 20 to 25 acres; Sosto Canyon, 10 to 15 acres; Ramirez, about 10 to 15 acres. No others. All, or most all, would have one or two acres. The others are negligible. Coming back now to the Malibu, almost all of the arable land there is cultivated, and is cultivated to the kind and

3502 character of products I have described. The class of cultivation or agriculture the land in Corral could be put to is various kinds of grain, corn and hay, some vegetables. And in Sosto the same; in Ramirez the same; in Zuma everything or anything. Zuma Canyon is the same character of soil approximately as the Malibu, and it could be used for practically the same purposes as Malibu has been and is being used.

3503 In the Sequit, the type of land is rich bottom land the same as Zuma and Malibu.

Cross-Examination

By Mr. Burnell:

In answer to these various questions as to the amount of arable land, I have not given my idea of the total amount of arable land in the whole Rindge Ranch, the Malibu Ranch. My answer was confined to the section east of Ramirez Canyon. There is a large portion of the

3504 ranch west of Ramirez Canyon that is not shown on these maps. There is in the whole Malibu Ranch that is arable land, whether it is actually cultivated or not, pretty close to 3000 acres, 2700 to 3000 acres. The land actually under cultivation at the present time is approximately within about four or five hundred acres of that—about 2500 to 2600 acres. Sheet 3, Exhibit No. 23, does not show the location of the proposed highway. It shows the location of the present road through Malibu Ranch, by two

3505 full lines running in an easterly and westerly direction to a southwesterly direction. That is the portion of the map that bears the word "road." The width of that road, on the ground, as used, it is about 12 feet. No portions of that road are fenced on both sides. The width of the road is 10 or 12 feet. The present road runs through some of the cultivated land that I have described.

3506 Mr. Anderson: I would suggest, and I don't want to curtail the examination, but I am going to request that the jury may look at this map and they can see which it runs through and which it does not.

Mr. Burnell: No objection to that.

None of the sheets on Defendants' Exhibit No. 23 show the location of the proposed road. The map, Exhibit 23, does not disclose the nature of the use to which the cultivated land is

3507 now put—nothing to indicate whether it is alfalfa land, barley land or hay land.

Mr. Burnell: Mr. Scotton, would it be probable or possible to place a tracing of the proposed road upon that map so we would have before us not only the present road but the proposed road where it passes through this property?

Mr. Anderson: We haven't any objection. Of course it would be only approximately.

A. I was trying to see if there was anything to identify our south line. (Witness examines

3508 map.) Yes, I think it could. I think with the use of the exhibits in the case our engineer can mark it upon the map.

Mr. Anderson: I will see that he does it.

The Court: If Mr. Scotton could do it himself it would be all right.

F. B. SCOTTON

resumed the stand for further

Direct Examination

3509 By Mr. Anderson:

The map which I hold was given an exhibit number, 23. At the adjournment of my testimony when I was last on the stand I was requested by Mr. Burnell to place on that map as near as I could the approximate location of the proposed road. I have done so. I have it on the map at the present time. I have placed it thereby drawing a line with a green lead pencil

3510 and marked it "Condemned." I find that the road as located on the ground differs from my recollection before. The location I have placed on the map is approximately its exact location.

Mr. Anderson: Have you with you the tax statement for the Rindge property for this year?

A. For the Malibu Ranch Grant I have.

Q. Does that show the assessment on the May K. Rindge portion of what is known as the Keller or Malibu Ranch property?

A. Yes, sir.

3511 Mr. Burnell: That is objected to as incompetent, irrelevant and immaterial.

Mr. Anderson: We have a theory as to whether or not it is the best evidence—that may be a question.

The Court: That is the point exactly.

Mr. Anderson: Very well, then. We will ask the assessor to bring the matter in here.

Mr. Vallee: If Your Honor has any doubt
3512 on the question of whether or not the assessor can testify as to the assessed valuation of this property, we have the authorities from the Supreme Court of this state on the point.

Mr. Anderson: I think counsel is right as a general proposition, but our proposition is that when the county of Los Angeles seeks to condemn land and any of its officers fixing the valuations, the act of its officers is binding on the county. I think it is an exception to the gen-
3513 eral rule. I concede the general rule to be as counsel has stated.

The Court: I am aware of the general rule.

Mr. Anderson: That would be our position.

The Court: Objection sustained.

(Exception No. 59.)

Mr. Anderson: Then do I understand that waiving the question of this not being the best evidence—

Mr. Vallee: We will waive that feature.

Mr. Anderson: Then for the purpose of the

3514 record and waiving the question of its not being the best evidence and the competency of the witness to testify, I will simply ask the witness the question for the purpose of the record. Do you know the assessed valuation placed by the county assessor upon the land, the two portions of the Rindge Ranch, the Rindge portion and the Rindge Company portion of the Malibu Ranch proper. That calls for a yes or no answer.

3515 Mr. Burnell: That is objected to as incompetent, irrelevant and immaterial.

The Court: I suppose the theory is that because the county of Los Angeles are plaintiffs in this action, that this is an admission against interest.

Mr. Anderson: Exactly. That is the theory precisely.

The Court: I am not going to rule on it now.

3516 I think the matter is worthy of some consideration.

Mr. Anderson: There is no shadow of a question as to the general rule.

The Court: But where a public corporation, or political subdivision thereof, such as the county, is seeking to condemn property and when they themselves or one of their officers, duly elected and qualified officers have made a valuation on a certain piece of property, which ought to be condemned, whether or not it is in

the nature of an admission against interest is a question. If you have any authorities on that, you may present them later.

J. C. PATTON,

recalled in behalf of the defendants, testified as follows:

Direct Examination.

Mr. Anderson: If the court please, in going over the evidence very carefully, I find that Mr. Patton was not asked about water conditions in one of the canyons, and I ask permission to supply that. The Sequit Canyon was entirely omitted in both his direct and cross.

(The Witness): I am familiar with Sequit Canyon, and with water conditions there, both summer and winter. The water conditions at present and at rainy seasons, there is water all along. At present and in wet seasons, the water is running in the Sequit Canyon. The water in the Sequit Canyon, in the summer and spring, it is away up the mountains. There is no water in the Sequit Canyon below the proposed right of way, at dry times.

Cross-Examination

By Mr. Burnell:

The nearest water south of the proposed road in the vicinity of this canyon is at the Willow canyon, about half a mile from the Sequit Canyon. That is natural water. There is no

3520 water that has been conveyed by pipes, ditches, or other means to the Sequit Canyon where it crosses the proposed road.

Redirect Examination

By Mr. Anderson:

There is water in the Willow Canyon in dry seasons. It runs at all times; it runs to the mouth of the canyon.

Mr. Anderson: I am about to exhibit to the
3521 jury Plaintiff's Exhibit 23, and I think it would be advisable for them to commence their examination with the third sheet; and I will call the jury's attention to the fact that the line in green is the route of the proposed right of way for the main road.

Mr. Burnell: Better term it the condemned route.

(Map exhibited to the jury.)

The Court: These exhibits will all be avail-
3522 able to you later on, gentlemen. If you desire to examine them now, you may do so. Have you any other witness?

Mr. Anderson: With one exception, as I explained to Mr. Burnell. There was a question in Mr. Patton's testimony as to the exact location of certain springs in Marie Canyon, and I have asked Mr. Patton to go physically on the ground and determine the location of these springs, and stated to Mr. Burnell when he ascertains that, he will be called back. With that

3523 exception, that is all. We rest in the three cases with that exception.

ALEXANDER CULVER,

a witness called in behalf of the defendants, being first duly sworn, testified:

That his occupation is, and for 24 years had been, that of real estate agent and appraiser; that for many years he handled and sold lands
3524 of all kinds, city, country, farm, alfalfa, and then commenced to buy and sell for himself, having laid out many subdivisions; that he had been appointed referee by the Superior courts of this county in land cases; and had acted as appraiser for Los Angeles county for the purpose of county roads through different ranches; that he had in the past appraised many large ranches for various purposes (enumerating many of them); that he was thoroughly familiar with the
3525 Malibu Ranch, having been over it a good many times—first about 20 years ago, and since 20 or 30 times; that some of the other ranches that he had appraised were similar in their general character to the Malibu Ranch; that from his varied experience as appraiser he had familiarized himself with the reasonable market value of ranch property throughout Southern California, and of the kind and character of the Malibu in this section of the state; that he was familiar with the map Exhibit A, and had had it

3526 before him in all of his investigations for the purposes of this suit.

That he had made an estimate as to the amount of land that is taken by the proposed main road out of the 60-foot right-of-way of the Port Los Angeles Malibu and Southern Railway, commencing at Los Flores Canyon, so far as the ranch is concerned, and running through the ranch to the Ventura county line, as far as this ranch is concerned.

3527 This witness was withdrawn at this point, but was recalled at a later stage of the case, and further testified on direct examination:

That the parcels so taken by the proposed main road from the right of way of said railway are parcels 301 to 310, both inclusive, as they appear on said Map Exhibit A, contain a total area of 2.95 acres, and are of the reasonable market value of $59.06; that he had given

3528 an average value of $20 an acre throughout.

That he is familiar with stock ranches and the stock business, having been familiar during the last fifteen or twenty years with stock and stock raising and stock ranches generally, familiarizing himself with those matters both by actual experience and by association with men of large and long experience in that business.

That, in his opinion, based upon his knowledge of the situation generally and upon his experience, the construction of the proposed main road

3529 through the May K. Rindge portion of the Malibu Ranch in the manner proposed, including the taking of the various parcels, would be a damage to that portion of the said ranch, for the reasons that it would be impossible to handle the cattle on the hoof with a pubiic highway such as the one proposed, if it should be taken out of Mrs. Rindge's portion of the land; that the May K. Rindge portion of the ranch is noth-
3530 ing but a cattle ranch, a stock ranch, which includes cattle, beef cattle, native cattle, horses, sheep and hogs.

That the reasonable market value of the forty foot strip right-of-way for the main road from Los Flores Canyon to the western boundary line of the May K. Rindge property on the 30th day of Sept., 1918, was $3,862.76.

That the reasonable value on that date of par-
3531 cels 21 to 21a (on Exhibit A) both inclusive, was $97.24.

That the reasonable value—market value—on said date of the 1947 acres constituting the May K. Rindge portion of the Malibu Ranch was $180,900, segregated as follows: 1650 acres pasture, $20 an acre, $33,000; 197 acres Malibu Flat, rich, alluvial, $700 an acre, $137,900; 100 acres mesa, hay, at $100 an acre, $10,000.

That in his opinion the damage in dollars and cents to said portion of said ranch by reason of the taking of the 40-foot strip and the various

3532 parcels 1 to 21a, inclusive, would be fifteen per cent, or $26,016.

That in the said portion of said ranch there is 175 acres lying south of the northern boundary of the Port Los Angeles, Hueneme & Southern Railway right-of-way, worth of Sept. 30th, 1918, $3500, or $20 an acre.

That all of his valuations are the reasonable market value on the date testified to.

3533 That the reasonable market value of the Rindge Company portion of said ranch on Sept. 30th, 1918, was, in his opinion, $453,860, segregated as follows: 9093 acres, pasture, at $20 per acre, $181,860; 2120 acres, hay and grain, $100 per acre, $212,000; 120 acres, alfalfa, $500 per acre, $60,000.

That the reasonable market value on said date of parcels 21 to 146, both inclusive, was, in his opinion, $794.40, and of the 40-foot strip right-
3534 of-way for the main road through the Rindge Company portion of the ranch, $5807.60.

That the construction of such a road as that shown on Exhibit A, together with the turnouts shown in the parcels, would, in his opinion, be a detriment to the Rindge Company portion of the ranch, for the same reasons given as to the other portion; and that, in his opinion, the damage that would result from such segregation, fixing them at the reasonable market value as of date Sept. 30, 1918, would be $62,642.70, or a damage of 15 per cent.

3535 That the land on the Rindge Company portion of the ranch lying south of the northerly line of the right-of-way of the Port Los Angeles, Hueneme and Southern Railway consists of 682 acres—482 acres of pasture land at $20 per acre, $9,640, and 200 acre of mesa hay land, at $100 an acre, $20,000; that of this land, 422 acres is embraced in said railway's right-of-way, all being pasture land; that the remaining 60
3536 acres of pasturage is the Point Dume land; and that the land not pasture lies east of Point Dume toward Ramirez Canyon.

His testimony as to reasonable market values of the various items affecting the Alisos Canyon road, as of the date of the commencement of the Alisos Canyon road suit, were as follows:

40 foot strip, $184; parcel No. 1, $78; No. 2, $142; total $404.00.

Damage due to severance, irrespective of the
3537 construction of any other road contemplated, one per cent, or $3,545.72.

Cross-Examination.

The cross-examination of this witness was substantially the same in the matter of the substance of the facts elicited as his testimony on his direct examination. The witness also testified that he had formed an opinion as to the number of beef cattle per acre that the ranch property would support or take care of. That in his opinion it was one head to ten acres, not including the yearling calves.

3538 The witness was also examined on redirect and recross but nothing further of substance elicited.

Monday, Dec. 2nd, 1918.

T. M. CAMFIELD,

called as a witness on behalf of the defendants, being first duly sworn, testified:

That he had resided in Los Angeles 32 or 34 years; that he had previously resided, on
3539 a stock and agricultural ranch, in the lower part of this county, now a part of Orange county; that he has known about stock ranches and been familiar with stock raising for 42 years, ever since has been in this country, to which he came at the age of fifteen.

That he is a real estate appraiser and broker, and had been in that business 32 years, buying and selling considerable land for himself, ap-
3540 praising a great deal of land for corporations and estates, among others, about two years ago, the properties of the deBaker Estate, including the Laguna Ranch at the edge of the city of about five thousand acres, and several hundred acres of bean land just this side of Santa Monica; that he is thoroughly familiar with the Malibu Ranch shown on Exhibit 6, having first gone actually upon it about three years ago, and ten or fifteen times in the three months preceding his testimony—the latter with a view

3541 to ascertaining the character of the ranch and the purposes for which it is adapted and its value, also going over it with other witnesses some of whom have testified, and with Mr. Culver and the attorneys for the defendants.

That he had appraised other ranches of a similar character both in that vicinity and elsewhere in Southern California.

That he was thoroughly familiar with the
3542 Map Exhibit A in five sheets, four being on a large scale and covering the entire route of the proposed main road from Los Flores Canyon to the Ventura county line, and the fifth being a map of the entire Malibu Ranch.

That from scaling the map, Exhibit A, he found that the May K. Rindge portion of the ranch contained 1947 acres; the legend on the map shows that.

That he is familiar with the 40-foot main
3543 road right-of-way strip on that portion of the ranch, and that, in his opinion, its reasonable market value was $3,112.76; and of parcels 1 to 20-A (Exhibit A), $387.24; and of the total 1,947 acres of the May K. Rindge portion $161,200—all values being given as of Sept. 30, 1918.

The following also took place:

Mr. Anderson: I would like to say to Your Honor that Mr. Burnell and I have agreed that we can give the testimony as to these parcels

3544 in the aggregate and we intend to file a written stipulation to the effect that each parcel may be deemed to have the proportionate value that its acreage bears to the entire acreage of the aggregate parcels. That is to avoid having to give interminable testimony on each of these parcels.

Mr. Burnell: In other words, the jury may find the value of the property sought to be
3545 taken from Mrs. Rindge and the value of the property sought to be taken from the Rindge Company without going into the details of all the parcels.

Mr. Anderson: That is stipulated.

That the construction of the main road as proposed through the May K. Rindge portion would cause damage and detriment to that portion, which damage, in his opinion, so caused would be $23,128.

3546 That in looking the ranch over very carefully, it was his opinion that the construction of the proposed road would reduce the selling value of that ranch more than the amount he had named.

Q. What reasons have you for arriving at that conclusion? A. In the first place it destroys the privacy of the ranch. They have the ranch alone there, more or less of a private ownership, between 21 and 23 miles long, with the ocean on one side and a fence at each end, and I understand now they are fencing the

3547 north line. That property is by itself. No one can get in there but the owners and their employees and friends. They can turn their stock loose and it can wander from feed to water at will, wherever they want to go and by running that lane or forty-foot road through that ranch and fencing it on both sides, it would practically cut the ranch in two, cut off the stock from the food or water on one side or the other,
3548 making really two ranches of it. In my opinion it will greatly increase the cost of operating the ranch. Now stock can run at will, the vaqueros or stock men or owners can go from one part of the ranch to another, riding across there 20, 30 or 40 miles an hour if they want to. On the other hand, if they have to carry keys for the gates, get off the horse, lock a gate, go across the road, unlock a gate and drive through and lock it up again, it will take a
3549 lot of time and expense, and, as I said in the first place, I think it would reduce the selling price more than I said.

The witness further testified that while private roads now ran through some of the fields, they were easily moved and he understood that surveys had been made to move them to the upper or lower side of each field; that the construction of the proposed road would increase the cost of cultivating and keeping up those fields and roads; keeping them up would be

increased from the fact that where there are large acres they use large tractors and very large teams, six, eight or ten head of stock, and it costs a lot of money in each day's operations, in turning, whereas if they have long rows, two or three miles long, as they can do now, they can plow across the roads now if they want to and make the road over; but with the fences up there, the road will be established.

That upon Mrs. Rindge's part of the ranch from Marie Canyon to Las Flores he figures there were 1650 acres of pasture land at $20 an acre $33,000
197 acres in Malibu Flat at $600 an acre 118,200
100 " of farm land " $100 " " 10,000

Total.....$161,200

That the nearness of transportation facilities does not enter into the value of bean land very much. As far as the sales of bean land are concerned, I suppose the Santa Monica land is about as favorably situated as the Ventura county bean land. It would not make much difference, particularly the way beans have been the last year or two. That it is true that the Ventura county bean land has a great many public roads running through it. The state highway from Los Angeles to Santa Barbara passes through Ventura, which highway will eventually go to San Francisco. That this does not enhance the value for growing beans or for

3553 lands at all. That the fact that it can be reached by automobiles and trucks does not help a bit. That farmers always have their own roads to get in and out. It might make it easier; it might not require so much power to get a thresher from one field to another, but they always have the power there and they get there. I don't think that the question of good roads has anything to do with the value of bean land in the market. That he considers the property 3554 of May K. Rindge best adapted to a stock ranch. That he just assumes that it is best adapted to a stock ranch.

That the construction of the main road, taking the 40-foot strip and the parcels, through the Rindge Company portion of the ranch would also damage that portion for the same reasons.

The witness then gave the following valuations as his opinion of the reasonable market 3555 value at the date of the commencement of the Main Road Case of the following matters:

40-foot strip of main road proposed to be taken through Rindge Co. portion, $5,807.60;

Parcels 21 to 146, both inclusive, $794.40.

He further testified that, in his opinion, the damage to the Rindge portion of the ranch by reason of the construction of the proposed road in the manner indicated on Exhibit A, with the various turnouts indicated, would be $62,627; and that his reasons for that opinion are exactly

3556 the same as those given concerning the construction of the proposed road through the other portion of the ranch.

That, in his opinion, the aggregate value of the Rindge Company portion of the ranch on Sept. 30, 1918, was $453,860.

That the property of the Rindge Company consists of 9,093 acres pasture land at $20 per acre, $181,860; 120 acres bottom land and
3557 2120 acres of grain land.

Concerning values in the Little Alisos Canyon Road Case, as of the date of the commencement of the action in that case, he testified:

That the 40-foot strip right-of-way for that proposed road was, in his opinion, of the value of $184; the parcels, $220.

He further testified that the construction of that road would, in his opinion, damage the entire Rindge Company portion of the ranch,
3558 and to the extent of $3,545.

His testimony as to the acreage to be taken from the right of way of the railway, and its value, was the same as that of the witness Culver.

At the present time he has seen them come to the private road and then they could plow across; then build another? Just drive across. It is not expensive; much less than turning around.

Q. You think if they were to plow up the

3559 present road where it goes through the agricultural land it would not be a matter of expense to make a new road? A. Absolutely not.

Q. You don't think it would cost $500 a mile? A. Not five cents; it would not cost anything. All they have to do is drive through.

Q. If this present road was plowed up and they wanted to make a new road they could drive over it and make it? A. The chances
3560 are it was made that way.

Q. It wouldn't cost anything? A. Never cost me anything in making that kind of a road. Q. You would not figure it would cost as much as $500 a mile to make such a road. A. I am not considering the bridges, the arroyos and the barrancas. Across a level piece of ground it does not cost much to make a road, if anything.

Cross-Examination.

3561 That he had taken from the assessment books of Los Angeles county the entire assessment of the Malibu ranch as a whole, including both the May K. Rindge and the Rindge Company portion, but not including personal property, and that the total of said assessment for taxes was $416,580, which is supposed to be 50% of its value, and which would make it $833,100.00, 100%, according to the assessor's figures; that the assessor himself put the value at 50%, and told the witness that he has done so—the asses-

3562 sor, Mr. Hopkins; that he had driven through stock ranches in automobiles and where there were cattle over public roads, and had observed that the cattle was sometimes frightened and sometimes not.

LESTER C. REED,

a witness called on behalf of defendant, being first duly sworn, testified as follows:

That he resided at Oxnard, Ventura Co., and
3563 was superintendent of the Broome estate (Guadalasca) ranch situate along the coast beginning at a point about 8 miles this side of Oxnard and extending about 8 miles down the coast towards the Malibu ranch, containing approximately 24,000 acres, and that he had been manager of the same a little over 3 years.

That the general character of the ranch is for stock and agricultural purposes; that they
3564 have stock upon it mostly beef stock; that there is about 4,000 acres under cultivation and the rest grazing land.

That he has been engaged in the stock and cattle raising business practically all his life.

That he has gone over the Malibu ranch in a general way several times—over the main part of the ranch only once, but the western end several times; that he is familiar in a general way with the ranch.

Q. Now, assuming that a highway 40 ft.

3565 wide should be constructed from the eastern end of the ranch at Las Flores Canyon to the Ventura county line at approximately the place indicated by the red line that you see upon this Defendant's Exhibit 6, and that the road was properly constructed and fenced, in your opinion would that have any bad effect on (damage) the Malibu Ranch as a stock ranch? A. Yes, sir.

3566 (Witness continuing.) From my own experience with stock and from seeing this proposed route on this Malibu Ranch, in my opinion it would practically ruin the ranch from a stock man's standpoint for a stock range. It divides the ranch up. It is a narrow strip of range anyway. And when you put a highway through it as this proposed highway is proposed to go you separate the water; there is water on one side of the road and pasture on the other, and 3567 then there is pasture on the one side and water on the other, and so on all the way through, and you can't have your cattle divided that way and make them do well or stock of any kind. It would have the effect on them that they have got to either travel too far for water or else too far for their feed, and when you handicap your stock that way you have no stock range at all. It would increase the cost of superintendence and operation.

3568 My experience and observation as to the ability to carry cattle from one side of a public road that is fenced to another for the various purposes that they have to be carried has been that the less you do that the better off you are with your cattle. The less you move the cattle—the more you let the cattle move at their leisure—the better the cattle will get along on the range.

3569 *Cross-Examination.*

On cross-examination this witness testified to substantially the same effect as on his direct examination, and also that the road as proposed with the crossing provided for as shown by the testimony would if built ruin the ranch as a cattle ranch, giving the same reasons in substance as those given in his direct examination.

That except for the extreme end toward the Ventura county line he had only been over the 3570 Malibu Ranch on one occasion.

He further testified that a cow will most always have a certain trail, but they don't generally follow it, they take the easiest way and possibly graze around a radius of a mile square, not often over that unless they have to, but they will graze into this trail and possibly go a couple of hundred yards to water, then they may walk back up the trail a half mile, and then start off grazing again; that is pretty a mile square of territory over which the cow

3571 grazes. They may graze over more than that. That would not ruin the cow. If the cow goes in a more or less straight line it would have a more ruinous effect that if she grazed on the way. That is my opinion of the cattle man. They graze to the water and graze back. That is the best way to fill up a cow.

The witness further testified that his testimony as to the damage which would be caused
3572 by the building of the proposed road was based upon the assumption that it was a stock ranch, not exclusively a cattle ranch; that it might be hogs, sheep, horses, but as a stock ranch; and that the same thing would apply to any stock you put on it.

That he would consider the Malibu Ranch from the examination he made of it exclusively a stock ranch; that he saw that some of it was put into beans, but didn't figure that it was
3573 bean land; that if it was used for bean purposes the road would damage it by cutting up the fields into smaller parcels, and that any practical farmer knows that the more you cut the field up the more work it takes to prepare the same amount of ground for cultivation.

3574 R. B. STRATTHEARN,

a witness called on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Newby:

That he resides at Simi, Ventura county, has lived there about 35 years, and is in the cattle business and farming, and has been for 35 years, owning a 13,000 acre ranch among others in
3575 Ventura county about 16 or 18 miles from the Malibu Ranch through the mountains, the general character of the land on which is pasture, beet land and bean and orchard land; that some of it is mountainous; that he has stock on that ranch, and that he has a lot of other ranches rented.

That he has in a general way familiarized himself with the Malibu Ranch.

That the construction of the proposed main
3576 road through the Malibu Ranch, to-wit: approximately 22 miles long from east to west, with a right of way 40 feet wide, as indicated by the red line on Defendants' Exhibit 6, would in his opinion damage the Malibu ranch to the extent of 20% of the whole valuation thereof; that if he were in the market to purchase such a ranch for stock purposes he thought the depreciation would be 20% of the value; that his reasons for this opinion are the inconvenience and the damage to the productiveness of the

3577 ranch in the production of beef and hogs; that he is talking about a stock ranch; that it would interfere with the beef in this way, that the traffic on the road would prevent the cattle from going and coming to water and that they would not locate at the water springs during the day or anything of that kind; that he was not talking of dairy cattle, but range cattle; that they are all shy and they would not stay
3578 there at all; that they would come in at night and go away if they drank at all; that if the road was fenced so that they had to pass through below it it was very doubtful to his mind if they would go to water underneath the road; that he had had experience on his own ranch of cattle passing under such construction; that the railroad runs through his ranch and there are quite a number of openings, stone arches; that the cattle have had free access to
3579 these openings since the railroad was built, but that to his knowledge there has never been a hoof through those arches, and there was nothing to prevent them going through.

That he had at the time of testifying about 600 head of cattle on his Ventura ranch, but had more cattle up in Inyo county.

That from his experience as a farmer the effect of the fencing of this proposed highway upon the cultivation of this tillable land would be that where the road cut off small patches

3580 here and there it would increase the cost of cultivation about 1/3 in those patches.

That he had sufficiently examined the Malibu Ranch to be able to state what in his opinion would be the reasonable market value per acre for that land—had gone over it for that purpose.

Q. What in your opinion would be the reasonable market value per acre of the Malibu Ranch? A. I have it divided into two pieces.

3581 Q. Yes. A. Mrs. Rindge, 1650 acres of pasture land, 200 acres in the flat, 100 acres in hay land, that totals $174,750. I valued the pasture land at $15 an acre. 200 acres where the lemons and other trees are and where the house is, $700 an acre. The hay land, $100 an acre. The Rindge Corporation, pasture land, 9093 acres at $15 an acre, or $136,395. Hay land 2120 acres, $100 an acre, $21,200. Alfalfa land, 120 acres, at $500 an acre. Now,

3582 that is a pretty high valuation. It is more than I would pay for alfalfa land at any place out in the open market, but as a necessity for that ranch it is worth that much.

Q. That is taken in connection with the entire ranch? A. Yes, sir.

Q. What is the total amount for the Rindge Company value? A. Total amount, $582,845.

The Court: What is the total of Mrs. Rindge's portion?

A. $174,750.

3583 *Cross-Examination*

By Mr. Vallee:

This witness upon cross-examination testified in substance and effect the same as upon his direct examination, elaborating somewhat upon the reasons given by him as to why the construction of the proposed main road in the manner contemplated would damage the ranch, and adding that the going to and fro for water
3584 and the other disturbances incident to the road would detract 50% from the production of beef cattle.

That if the ranch was on the market here for sale after the road was constructed there would be a depreciation of 20% for what could have been obtained for it for any purpose at all before the road was put through; that his estimate of 20% is on the assumption that he would want to use it as a stock ranch; that
3585 the percentage of depreciation taking the ranch as it exists and as he would want to use it would be the same in both cases; that the owners are using it now for a bean ranch in part and would use the same land for pasture afterwards, that is, he would, and that the difficulties are just the same.

The witness at this point corrected an error in his total valuations of the properties; stating his total for both portions at $582,845, divided into $174,750 for the May K. Rindge portion, and $408,395 for that of the Rindge Company.

3586 That on his ranch the arches through the railroad were 14 feet high and 10 feet wide; and there was water both above and below them; but that the water below was very much nearer than the water above; that the cattle went over the ridge in preference to going through the arches; but that he never tried to drive them through.

Redirect Examination.

3587 The witness testified that he would regard the Malibu Ranch as suitable for a stock ranch, and that only; that on a stock ranch it is necessary to cultivate some of the land; that on such a ranch you raise crops to feed the cattle and hogs; that he would consider the agricultural purposes incidental to the main purpose of a stock ranch; that he would want to increase the carrying capacity of the ranch by doing so.

GEORGE RILEY,

3588 a witness recalled on behalf of the defendants, testified as follows:

That he resided in Ventura county, was manager of the Potrero Ranch of 8500 acres, located partly in Los Angeles and partly in Ventura counties; that he was familiar in a general way with the Malibu Ranch; that he would consider it a stock ranch; that assuming that a highway was to be constructed from the east end of the Malibu at Las Flores Canyon to the Ventura line west along the route indi-

cated by the red line on Exhibit 6, such a construction would in his opinion damage the Malibu Ranch; that, with reference to stock purposes, it would injure the ranch in working the stock; that it would interfere with the operating of it as a stock ranch; that the passages provided by the plans for the proposed road and already testified to would not be sufficient to operate it as a stock ranch; that it would be a very unhandy way and hard to handle stock; that if at certain seasons of the year cattle would have to pass from the north end to the south end of this road through these passages for watering purposes and grazing purposes, it would be very unsatisfactory, and would injure it as a stock proposition; that if it was put on the market as a stock ranch he would not have it with the road there at all; that it would affect the market value of such a ranch to the extent, he should judge, of at least 25%.

Cross-Examination

By Mr. Burnell:

That he means if he owned the place he wouldn't have a road through here for 25% of the price of the ranch; that his testimony is based upon his personal views as to what the ranch would be worth to him as a stock ranch; that he has viewed the property purely as a stock ranch; that as to the cultivated por-

3592 tions which he had observed on the ranch and saw in cultivation he had come to the conclusion that if he had the ranch he would farm those for the benefit of stock, horses and cattle; that he did not think that the land he saw cultivated to beans was very good bean land.

That he had had charge of and experience with a cattle ranch of a similar shape and size as the Malibu traversed by a road in the man-
3593 ner the Malibu would be traversed if the proposed road is built through it, having been superintendent of the Jesus Marie Ranch in Santa Barbara county about 20 miles long containing about 45,000 acres along the coast which had a road nearly from one end to the other—a public road; that said ranch was used for a stock range, and that he found that that road interfered greatly with the use of that ranch as a stock ranch in moving stock and the road
3594 cut into the waterings and they were troubled a great deal with trespassers; that the cattle on that ranch could get from one side to the other only by crossing over the road; that he does not think that would make a great deal of difference upon the Malibu Ranch; that you would probably have to move most of them over anyway—put on gates and drive them across; that the cattle might find their way back and forth under the bridges if the bridges were high enough and long enough; that with

3595 such a bridge as the one proposed to be built across Carbon Canyon 40 feet wide with a clearance of 10 feet from top to bottom, the bridge would not be wide enough for cattle to go through; that you would have a good deal of grief trying to get them through; that as to the bridges generally if the cattle wanted to drink and were on the other side of the road from the water some of the cattle would 3596 go through and some he thinks never would; that some of the cattle would go without water rather than go through the bridge.

Wednesday, November 27, 1918.

ED C. CANET,

a witness called on behalf of defendant, being first duly sworn, testified:

Direct Examination

By Mr. Anderson:

3597 That he lived in Ventura, and had off and on since 1872; that he is in the stock and fruit business, owns a cattle ranch, a stock ranch, of about 5,000 acres, between Ventura and Ojai on Ventura avenue probably 40 miles from the Malibu; that he has been in the stock raising business practically all of his life, and on his ranch raises cattle and sheep; the ranch being mountainous; that he also raises beans and apricots; that he is sufficiently familiar with

bean lands to be able to pass judgment on them from a practical point of view.

That he had been upon the Malibu Ranch, had visited and was familiar with all of it, and used to run sheep and cattle there with Mr. Sentous; that he knows the nature and character as a stock ranch, and that it is practically a stock ranch and nothing else.

That in his opinion to put a road 40 ft. in width through the ranch along the line shown in red on Exhibit 6 and fence it on either side with bridges or cattle passes not to exceed 13 in number throughout the length of 22 miles would be a big detriment to the land. He then gave the following reasons for this opinion: In the first place the ranch is a very extended ranch. Stock don't do well when they are chased around from one place to another and if they have to go very far to get water, or if they have to go away around, and go through culverts or under bridges and then come back to get back where they started to feed, your cattle are not going to put on any flesh, consequently the fencing up of that ranch in its present extended condition, being so long to the water, practically the water all being in the heads of the canons, you would be fencing off your pasture land and the land you would have below is only good for the summer months as the hills would have to be fed

3601 off while green so that the cattle would be at a great loss. to get down along the coast and feed back up in the hills or go back there for water. The witness further testified that assuming that along portions of the ranch the conditions were reversed the water being exhausted in the upper canyons in summer but with water to the south of the proposed road, it would operate in the same way as he had
3602 just described providing the water was not too far away from the pasture.

The witness then after testifying to his experience with stock ranches and his knowledge of their values in the vicinity testified that in his opinion the reasonable market value of the Malibu Ranch for a stock ranch was about $18 or $20 per acre, and that a stock ranch is what he considered it useful for. He also testified that in his opinion the ranch would
3603 suffer from segregation caused by putting the main road through the ranch in the manner proposed at least about $5.00 per acre—that is, that the reasonable market value of the ranch after the road was put through would be reduced as a whole in at least that amount.

Cross-Examination

By Mr. Burnell:

Upon cross-examination this witness testified substantially to the same effect as on his direct examination. That he is figuring the value

3604 of the ranch on the basis of the return it would bring, and not upon the amount that could be obtained for it if it was put up for sale in the open market. That he doesn't know what it would bring that way. That it would depend on the parties. That he has no knowledge of sales of property situated as this property is situated in that vicinity, having been made within the last two or three years. That he has not
3605 made any inquiry as to the prices at which property *of* held in that vicinity. He further testified that notwithstanding the fact that the ranch was held in two ownerships, the eastern portion by Mrs. May K. Rindge and the western portion by the Rindge Company, nevertheless in his opinion the portion lying west of Marie Canyon was worth $18 to $20 per acre irrespective of and leaving out that portion of the ranch between Las Flores and Marie; and further, that he does
3606 not know of any property suitable for stock raising purposes and situated as is the case with the property of the Rindge Company that has been sold in the open market at from $18 to $20 an acre, the land not being reached or penetrated by a public road. That he has never heard of such a sale at such a price. That he grazes cattle upon the ridges and upon the tops of the mountains. That they walk down to get water. That they walk down the sides of the canyons; they walk down the canyons.

3607 That they make their own roads and trails, and in some places there are roads. That he has found from his experience what cows and cattle if left to themselves always make their own trails to and from water, and that they follow those trails when they make them. That he was acquainted with the Malibu Ranch and had grazed cattle on it. That some of the cattle had grazed up in the mountains at the heads
3608 of the various canyons that go through the ranch. That some of those canyons were dry in summer. That in the canyons the waters come down to along about where the breaks are from the high mountains to the level land or the clear land. That the distance the cattle had to go to get to water—that is, the cattle that were grazing on the tops of the ridges and along the tops of the canyons, the longest distance they had to go to get to water depends
3609 a great deal. In the spring time when the cattle eat up in the hills, they don't require so much water. In the summer time, we have to bring them down to the low lands. They naturally work down to a certain extent themselves, but some cattle get used to a place and they stick around there unless you drive them to the other place, until they get acquainted. In the spring time, the cattle that is grazing on the tops of the ridges drink some water. That the longest distance that any of his cattle had to travel to

3610 get water on the Malibu ranch was sometimes they had to travel two miles about, or in that neighborhood, depending on the place where the particular animal happened to be grazing, and the particular season of the year. That it is true that out of a bunch of cattle some will go to water more frequently than others under any conditions, and some will go to water and some won't. That he doesn't mean that some of the cattle won't go to water at all. That they
3611 will go to water, but that they will stay away so long that they will lose all their flesh.

And further, that even though there was no public road from Las Flores to the Rindge portion of the ranch, if it could be reached by a private right-of-way his opinion as to the value of the Rindge portion, that is to say, the Rindge Company portion—would not be affected by the fact that there were no means of access
3612 by a public road.

He also testified concerning the passageways under the bridges or through the cattle pass that while there might be nothing to prevent the cattle from going under these bridges and through these passes they would not do so naturally; that they could not be easily taught to do so, and that while in one way cattle will find their own way to the nearest water without any difficulty, it is also true that they will probably lie on top of the hill and stay there

3613 all day without water when if the natural passages were open they would have gone to the water; that even if the cattle were driven through these passages to water once or twice after that they would not go there willingly or without being driven, simply because they won't; that they don't though the witness does not know why, they simply don't, that is all—some of them would and some of them would not; that he had had experience in this regard,
3614 and that his testimony was the result of this experience.

WILLIAM MCGUIRE,

a witness being called on behalf of defendants, being first duly sworn, testified:

That he lived in Ventura, was 72 years old past, was retired, had had various occupations, and had been a stock man and connected with the stock business all his life, but still owned a
3615 stock ranch though not actively in charge; that he had been on the Malibu Ranch and looked it over with a view of ascertaining its general nature and character and value; that its general topography is somewhat similar to the ranches he had been familiar with, though the one he had would carry more stock per acre.

That the construction of the main road through the Malibu Ranch along the route shown by the red line on Exhibit 6 and in the

3616 manner and with the passage ways for cattle contemplated would be a detriment to the ranch as it would make the cattle travel further, and it would be difficult to get cattle through; that some cattle would pass through, but that a great many would have to be forced to get them through unless they became very thirsty; that lack of water detracts from your cattle; that they will not fatten so well; that assuming that
3617 they would take the trouble to go the distance necessary to get to and from the water and did succeed in getting the water the fact that they had to travel the extra distance away would be a detriment to them.

That in the opinion of the witness as he had observed and looked over it the ranch was suitable for stock and was not as a whole suitable for any other purpose; that (after qualifying to so testify) in his opinion the reasonable
3618 market value of that ranch, the Malibu, as it stands without a public road through it, what it would probably sell for, is $20.00 per acre; that the amount of damage or detriment to it with a road through it in the manner described he would put at 20% of the value of the ranch, which would be $4.00 per acre.

Cross-Examination.

Upon cross-examination the testimony of this witness was substantially the same as that given by him on direct examination.

3619 He further testified that he did not think that the property known as the Malibu Ranch was suitable for any other purpose than stock raising taking is as a whole; that he did not think it would be suitable for subdividing into small farms; that a large cattle ranch could be handled to better advantage than a small one; that the most money could be gotten out of that ranch by using it for stock raising.

3620 That the fact that there was no public road across the May K. Rindge portion of the ranch, if the Rindge Co. portion could be reached by a private road, would not alter his opinion as to the Rindge Co. portion.

That he believed that the Malibu Ranch would sustain 1400 head of cattle, which is figured out on the basis of so many head to the acre —between 9 and 10 acres per head, calves thrown in; that he don't count calves in mak-
3621 ing the estimate, but referred to the adult cattle.

PERRY A. HOWARD,

recalled on behalf of defendant, testified:

That he had driven several times over the present private road on the Malibu Ranch starting at Las Flores Canyon and going even beyond the Ventura county line, and had observed the nature and character of that road; that in his opinion the least reasonable cost of constructing a road of that character upon that ranch per mile would be about $500.00.

3622 That in addition to his former experiences as road contractor and constructor he had had experience in the matter of stock raising all of his life; that until he came to this country when he was about 29 years old he did nothing else but stock raising in Kansas and Indian Territory; that he is now 59 years of age, and for the past 30 years since he came to California he has always been interested in stock raising and owns the San Locus Ranch in Santa Barbara
3623 county, which is a mountainous stock ranch consisting of about 7200 acres.

That he is thoroughly familiar with the Malibu Ranch, having been over it a number of times, and that topographically the Malibu is very similar to his ranch, which consists of mountains, canyons, barrancas, level ground and some low land.

That he had been over practically the entire
3624 route of the proposed road through the Malibu Ranch, and was familiar with the facts; that the Malibu Ranch proper embraced within the purple lines shown on the map, Exhibit 6, is about 22 miles long, and that it is crossed by about 13 canyons at which bridges are to be constructed which will have sufficient clearance and be of sufficient width to enable cattle to pass to and fro; that he had as a matter of fact specifically examined the particular places where the bridges are to be located; that bear-

3625 ing in mind those matters and facts in his opinion as a cattle man and from his experience the placing of the proposed 40 foot road along the route contemplated would most decidedly damage the ranch.

That his reasons for his conclusions in that regard are that if you take any mountainous country and put a fence in some particular place and not put your fences expecting to turn
3626 cattle into a certain direction, it does damage that is incalculable almost because you are cutting off from the natural places to water the stock, you are cutting off large tracts of your pasture that make it a very serious thing; that stock when they feed in winter when they go to water they don't seem to be of the idea "we will go to water," but they drift to the water and drift away from the water; but if they are removed from water for a distance and there
3627 is no way for them to feed up to it and away from it and you start out to drive them two or three miles or a mile and a half to water, it isn't practicable; that it is not a practical stock ranch divided that way.

That in his opinion the Malibu Ranch as he has observed it and in its condition as he saw it is best fitted for stock purposes, and that stock purposes would be the ones for which it would bring the highest price on the market.

3628 That (after qualifying to testify as to values) in his opinion the reasonable market value of that portion of the Malibu Ranch from Marie Canyon to the Ventura county line owned by the Rindge Company, assuming that it was placed upon the market by the owner, not forced to sell, and purchased by a buyer willing to buy but not forced to buy, taken as a whole would be about $40.00 per acre; that this applies
3629 to the whole ranch, the company's portion and Mrs. Rindge's portion, and that taking those portions segregated it would be worth about the same.

That in his opinion the damage or detriment to the ranch by reason of the construction of a road of the kind and character proposed and described to him through the ranch taking the valuation on the basis of $40.00 per acre would be 10% or $4.00 per acre to both portions and
3630 to each; that the damage per acre irrespective of percentage would be about $4.00.

That the construction of the Alisos Canyon road as contemplated would damage the ranch as every road you put through a mountain country affects it as to stock raising.

Cross-Examination.

The testimony of this witness on cross-examination was substantially the same as that given by him on direct examination on the subjects covered by the direct examination.

Among other things the following question was asked him and he gave the following answer:

Q. In those portions of the ranch where your $500 a mile road would be constructed and the ranch thereby divided by the two roads into three portions, wouldn't there be more detriment than by the division of the ranch into two portions by the public highway? A. Well, I don't look at a road built as the road through the Rindge Company Ranch is at present as being particularly destructive or as a damage to the ranch. There is no fence. It belongs to them. They can cross at any time. They can exclude anybody they want to and that is a wonderful thing in a ranch. If the ranch is yours you are able to say who shall go on it and on it and who shall not. If you put a right of way through there, and the public has a perfect right to go into the ranch, it changes the aspect of it, and it changes your view toward it as no one knows until they begin to look at it that way.

The defendants then offered and there was received in evidence a deed dated January 15, 1892, by Henry W. Keller as grantor to May K. Rindge as grantee, whereby said grantor granted and sold to said grantee the whole of the portion of the Malibu Ranch (referred to herein as the May K. Rindge portion) which

3634 was located east of Marie Canyon, as shown on "Exhibit A" of the complaint introduced as an exhibit herein, which said deed contained the following reservation:

"Subject to a right-of-way to pass and repass over and along the private road now used in going to and from that portion of said Rancho Topango Malibu not hereby conveyed to the northern portion of said rancho from Santa Monica, until a public highway shall be estab-

3635 lished through the land hereby conveyed to take the place thereof."

It was then stipulated by all of the parties to these actions and agreed that the source of title of the Rindge Company and the source of title of May K. Rindge is the same, both deriving from Henry W. Keller, the Rindge Company not directly but by mesne conveyance.

PERRY A. HOWARD,

3636 recalled, testified:

Redirect Examination

By Mr. Anderson:

That assuming that the main road is built as proposed, the damage to the Rindge Company portion of the ranch by reason of the construction of the Alisos Canyon road in the manner proposed would be about 25 cents an acre, and if the main road were not constructed, but the Alisos Canyon road were, then the dam-

3637 age from such construction would be probably a dollar an acre.

G. E. GARDNER,

a witness called in behalf of the plaintiff, in rebuttal, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

That he lives in Los Angeles, and has for
3638 about 25 years; that his business or occupation is realty broker and appraiser. That he had been engaged in the business of realty broker and appraiser about 15 years. The witness testified fully as to his general experience in the valuation and appraisement of land. That in some appraisals he had acted on behalf of the county and in others on behalf of private owners; that he was acquainted with the ranch
3639 generally known as the Malibu Ranch; that he had visited that ranch about five times within the last four or five months for the purpose of familiarizing himself so that he might testify as to values in this trial; that he was acquainted with the location of the proposed public highway through the Malibu Ranch from the eastern terminus of Las Flores Canyon to the Ventura County line, and with the proposed road running from the road just mentioned up Las Alisos Canyon; that he had made a study of the prop-

3640 erty in question with a view of forming an opinion as to the value of the property as a whole also the value of parts of property to be taken, and determining whether or not the remainder will or will not be damaged. That the Malibu Ranch in general is a long strip of land extending for some twenty miles along, the coast and back to the summit of the hills probably three-quarters to one and one-half
3641 miles wide except at the widest point it is probably two and a half miles wide at Point Duma; that it mountain range land in the hills and on the mesas it is plow land; that in the valleys it is fruit and bean land, and alfalfa land. That he had handled lots of land, but don't know anything about soil. That he had familiarized himself with the value of land in different parts of Southern California. That he had formed an opinion as to the value of the land that is
3642 sought to be taken in these cases and had also formed an opinion as to whether or not damages would be caused to the remainder not taken by reason of the severance.

Mr. Burnell: I will ask you to start in at Las Flores Canyon and travel through the ranch and describe the property along the proposed right-of-way. If you have made any notes in your investigations, I presume there will be no objection to your using them.

Mr. Anderson: Not in the least.

3643 Mr. Burnell: You may use them.

Mr. Anderson: Those were notes made up by you and Mr. Allen and Mr. Crippen and Mr. Butterworth, or are they independent notes? A. These are notes I made on the ground, and they were typewritten here in Los Angeles.

Q. And Mr. Butterworth, Mr. Crippen and Mr. Allen were all along? A. Yes.

3644 Q. And each of you has a copy of the same notes? A. I think so.

Mr. Anderson: That is all I wanted to know.

A. The proposed right of way begins at a point on the east line of Malibu Ranch where the bridge crosses Las Flores Canyon. From this bridge to Coal Canyon the proposed right-of-way runs along a strip of beach land, averaging in width probably 250 feet. At Coal Can-

3645 yon a large rocky promontory projects towards the beach, on the east side; a small rocky head is on the west side; there is upper water in the upper reaches of Coal Canyon. We were on the ranch September 18th to 24th, I believe. I am not absolutely positive as to the date, but it is near that time. It is near that time, near the 20th, two or three days on either side of the 20th, 1918. From Coal Canyon to Malibu Canyon the proposed right of way runs along the beach land. This is a strip of beach that

3646 averages in width about 200 feet. There is a wharf and a warehouse on the beach strip, about one-quarter mile east of Malibu Creek. At Malibu Creek where the proposed right-of-way cuts a small two-room California house built of up and down O. P. boards, battened; also a small loading platform built of 2 x 12 O. P. The right-of-way crosses the railroad taking about 1,000 feet to the crossing. That is, it takes a thousand feet to cross there. This
3647 wharf and warehouse are fenced with a four-wire wooden post fence. Between the wharf and Malibu Creek the point runs down to the sea, and a sandy jetty runs out twelve hundred or thirteen hundred feet on which there is a small lake. There is a house and chicken corral on this spit. It crosses low land which probably overflows in the rainy season, taking a portion of a small portion of land now in
3648 corn.

Q. What in your opinion is the value of the beach land just described? A. I think $10 an acre was the value put on the beach land.

Mr. Anderson: I move to strike out the answer "probably overflows" as being indefinite and a matter of speculation.

The Court: In its form it does look like it is speculation but it may not be. There should be some elaboration to that statement. You

3649 stated it probably overflowed in the rainy season. What was the basis of that statement?

A. It lies very low, near the surface of the water line at that time in the creek. It looked like it overflowed in rainy weather. They had a crop of corn, probably Kaffir corn on it which they could get off before it overflowed and I inferred that it was overflow land. I am familiar with the appearance of the land that is subject to overflow, that I personally know
3650 to overflow. It looked to me to bear the same appearance. I have given the value of the beach land, $10 an acre. The beach land is now being used for nothing; the private road runs along there. Other than that there is nothing. The proposed right of way continues north, taking out a corral oval in shape, about 60 by 90 feet on the west side of a row of eucalyptus trees, then swinging west across
3651 Malibu Creek on a bridge. The land where this corral is located is fine but the strip is narrow. The land drops off into a creek bottom which is gravel and poor land, probably overflows. Of this beach land I was talking about, from Las Flores Canyon to Coal Canyon, I think it is three quarters of a mile and from Coal Canyon to Malibu is about two and a quarter miles. I have figured the acreage of this beach land, concerning this proposed right of way, but not the acreage of the balance.

3652 From Las Flores to Coal Canyon there is about 4,269 acres in the strip and the parcels, and there are four parcels between Las Flores Canyon and Coal Canyon. The acreage between Coal Canyon and Malibu Canyon—I can't give you exactly, for the reason that our arbitrary runs—crosses the proposed right-of-way just west of Malibu Creek. What I asked for would include the acreage in that portion that rounds
3653 the point there and runs through the cornfield and the corral there. I would say there is approximately seven acres in the forty foot strip and the parcels between Coal Canyon and Malibu point.

The creek bed or wash at the point of the proposed crossing is about 600 feet wide, thence continuing west the proposed highway takes a fence on either side of an old road, now there for a distance of about 300 feet. Both of these
3654 are hog tight fences. The land here is light, rocky and poor for about 300 feet where the right of way enters a patch of fine land, in corn, having a light crop on it; thence west through bean land for about 4,000 feet to where it meets the hills. The land was in beans where we were and we were informed that it had been in beans for a number of consecutive years, and that is the reason I called it bean land. Of this soil that I described as light rocky and poor, about 340 feet is taken by the proposed

3655 right of way. There are two parcels, one on each side. One contains .64 and another .59.

Q. What in your opinion is the value of the land you have just described as light rocky land, sought to be taken by the county in this case?

Mr. Anderson: I am going to object to that on the ground that it is not a proper way to arrive at the value of the 40-foot strip, to take two or three hundred feet of lineal distance and
3656 give a value on that particular thing; that is not the proper way to arrive at it. The value of real property in a parcel is its value in connection with the remainder, and the value is best and only properly ascertained as a whole, a continuity, without reference to a piece. For the purpose of cross-examination it would be proper, but not for the purpose of a general valuation of a given parcel. You might as well ask him how much this tree or that rock
3657 was worth, or any given body of land, and I wish to make that objection and have it understood that it goes to all that examination if the court rules against me.

Mr. Burnell: It will be so understood if the court rules against you.

The Court: Objection overruled.

(Exception No. 60)

That strip of rocky land was averaged with other land, at a valuation of $75 an acre. It was averaged with some good land on the east

3658 side of the creek, the land where the corn is planted, and the land where the corral stands, and the creek bottom land—land in the immediate proximity of this land. That land I have just described as being a portion of the general tract that I placed the valuation of $75 an acre on, extends from where the beach land left off to where the land cultivated to beans begins, approximately. That takes us down to this land I have described a moment ago, that
3659 is actually planted to beans.

Tuesday, December 3, 1918.

A. D. RUSSELL,

recalled in behalf of the plaintiff, testified in rebuttal as follows:

Direct Examination.

Mr. Burnell: I think it has already been testified that Mr. Russell is the owner of the
3660 Russell Ranch.

Mr. Anderson: Mr. Russell has qualified as a stock rancher.

Mr. Burnell: Yes.

Mr. Burnell: Is there any public highway running through the Russell Ranch?

The state highway from Los Angeles to Ventura and points north of that runs through his (the Russell) ranch; that under that highway on his ranch there are several openings about 6½ feet high by 4 or 5 feet wide; that

3661 he has seven or eight hundred head of cattle on this ranch; that the road has been there ever since he owned the ranch—about 36 or 7 years with these openings or passages under it; that his experience with regard to cattle passing through the openings is that it is hard the first time to get them through; but after that there is no trouble; after that they go backward and forward; you see them stringing down; there
3662 is no hurry; they become accustomed to it, graze as they go along after they get through the culverts if there is any feed.

"Q. Now from your experience as a stock raiser and owner of a stock ranch, have you been able, and have you formed any opinion as to whether a public road running through a stock ranch is a detriment or not? "A. Yes.

"Q. What is the opinion?

"Mr. Anderson: Objected to as incompetent,
3663 irrelevant and immaterial, no foundation laid. It is not shown that he has had any experience excepting on the one ranch.

"A. My opinion is that it is not a detriment to a ranch."

Exception No. 61.

"Q. Is it a benefit?

"Mr. Anderson: Objected to as leading.

"The Court: It is leading but I will permit it.

"A. I would say that it was a benefit to have a road through my ranch.

3664 "Mr. Anderson: Move to strike it out as not responsive.

"Q. Without regard to your particular ranch, but with regard to stock ranches in general, would you say that it was or not a benefit to have a public road through a stock ranch?

"Mr. Anderson: Objected to as no foundation laid.

"The Court: Objection overruled.

3665 "A. I would not think it was a detriment."

Exception No. 62.

"Mr. Anderson: Move to strike out the answer as not responsive.

"The Court: Motion denied.

"Mr. Anderson: He was asked if it would be a benefit."

Exception No. 63.

"Q. Assuming the ranch (Malibu Ranch) is of the shape shown on the map (Exhibit 6), and
3666 assuming that it is approximately twenty-one or twenty-two miles long, from the eastern to the western terminus, and of a width varying between half a mile at the narrowest point and approximately two miles at the widest point and the shape shown on the map, and assuming that a public road is laid out through that ranch as shown by the red line extending from Los Flores Canyon to the Ventura county line, as shown on the map, and assuming that the ranch is partly mountainous country, the mountains or

3667 hills being indicated by the way the contour lines on the map, and there is a considerable amount of level and low land to the south, and assuming that that ranch is used for stock-raising purposes to a considerable extent, there being in the neighborhood of a thousand cattle on the ranch and some sheep and hogs, would you say that the building of such a public road would be a detriment to the ranch?

3668 "Mr. Anderson: Objected to, no foundation laid and not sufficient elements contained in the question to enable the witness to answer it properly.

"The Court: I think the latter ground is good, particularly as to water.

"Mr. Burnell: I will ask you, Mr. Russell, to assume that at some of the canyons which are shown on the map, the names of which are printed, Corral, Puerco, Escondido, Latigo, Ra-
3669 mirez, Sosto, Zuma, and the other canyons on there, that in some of those canyons there is water above or north of the proposed road, and that in some of the canyons, and in other places, there is water south of the proposed road, but not north; and assuming further that there will be thirteen bridges crossed by the road where it crosses various canyons, and that under each of these thirteen bridges there will be an opening of larger dimensions than those you described as being under the bridges at your

ranch, then would you or not say that such a road would be a detriment to the ranch?

"Mr. Anderson: We renew the objection.

"The Court: I think there is one element that is essential, and that is the question of fences.

"Mr. Burnell: Further assuming that the proposed road will be fenced upon both sides, not in its entirety, but along such portions of it as will require fencing to keep the cattle off the road.

"Mr. Anderson: I object to that, if the court please, that it is not sufficient foundation, and particularly in this, that irrespective of any other question on the matter of fencing and now before the court, there is no evidence that the fence along the entire north side of the road will not be necessary. We don't contend it won't be necessary on both sides, but the evidence as it stands shows the absolute necessity of the fence along the north side; in other words, dividing the ranch by a fence.

"The Court: Not indicating what fences are necessary, or not necessary, the objection is overruled.

"Mr. Burnell: Now, assuming all the facts stated in my last two questions, would you, or would you not say that such a road would be a detriment to the ranch?

3673 "A. I don't think it would be a detriment to the ranch."

Exception 64.

The witness further testified that the highway through his ranch was used by automobiles; that if the cattle get on the road they are liable to get hurt, some of them by the automobiles; that their presence on the road does not frighten the cattle; that their passage over the bridges under which are the openings does not frighten
3674 the cattle; that he had never noticed anything of the kind; they soon get used to it; that you can hardly drive them away from an automobile if they do get used to them; that that is the trouble.

Cross-Examination.

The witness testified that upon his ranch they had both native and range cattle. That he couldn't tell how often he had observed the
3675 manner of the passage of those cattle backward and forward under the railroad. That he had been around among them when the autos have passed and all that. That they get so they don't care anything about it. That he is talking about the actual passage to and fro. That he has not seen all the cattle pass under; that he didn't stay long enough. That the road goes about three miles through his ranch. That he owns on each side. That the road cuts it just about in the middle, square in two. His ranch is just

3676 about square; the road goes through about three miles, the county road, the state highway. I mean the road traverses through the ranch about three miles; about three thousand acres on each side of the road of his ranch. His ranch is 6400 odd acres. That the canyons and ravines where this road crosses are not very deep. That the country through which this road passes is not mountainous; where the road is it is mostly
3677 level. That the openings are 4 or 5 feet wide by 6½ or maybe 7 feet high. That he has seen a herd driven through these. He has driven them through himself; three or four hundred in a herd. That he couldn't tell how many he has driven through. That it doesn't take very long to drive three or four hundred cattle through that narrow way. That they didn't have to go one at a time. That two cattle can go through a five foot opening, but very seldom they do
3678 through two; they generally go through one at a time of their own accord. That he never drove them through except the first time. He has probably done that once every year. They generally go themselves after starting. That he stayed there and watched them to see whether they went through. That he couldn't say that they all went through, because he didn't stay long enough. That they all had to go through, but not maybe when he was there, because of water. If they had not he would have known it

3679 very quick. The pasture was on both sides, but they generally fed on one side before the other, so it was feed that brought them back and forth. They went back and forth daily, because if they had not they could not have lived. That he didn't see them.

C. E. GARDNER,

recalled for further examination, his direct examination was resumed by Mr. Burnell, and he
3680 further testified:

That across Malibu Flat the road proposed runs through four thousand feet of bean land, two thousand feet of which was of the value of $500 an acre; the next 1500 feet, $400 an acre; that after passing this fifteen hundred feet, which takes you to Winter Canyon, the road proposed runs around the base of the hills for a thousand or twelve hundred feet, then climbs
3681 to the mesa on the east side of Marie Canyon, and for this strip was worth $15 an acre, it being badly washed pasture or grazing land; then for about 1000 feet over a rolling mesa of rocky soil that had been in hay, and through three or four hundred feet of bean field reaching to the east side of Marie Canyon, the rocky pasture being of the value of $15 an acre, and the bean strip, $200 an acre; that the land taken by the proposed road in crossing Marie Canyon, badly washed and very rough, was of the value of

3682 $20 an acre, which took the proposed road to the west line of the May K. Rindge property.

That the entire forty-foot strip through the May K. Rindge property contained 21.382 acres, valued at $2,267.37.

That parcels 1 to 20a, both inclusive, sought to be taken from the May K. Rindge property contained 4.485 acres, valued at $207.81.

(Wherever the witnesses as to value testified
3683 concerning value they gave their opinion as to the reasonable market value at the times to which their testimony was addressed, viz: in the Main Road case as of Sept. 30th, 1919, and in the Alsos Canyon Road case as of the date of the commencement of that action; but to save repetition, in transcribing or referring to their testimony the word "value" is used, but in the sense of "reasonable market value" of said respective dates.)

3684 This witness upon his futher direct examination testified *in extenso* and with much detail to the respective values of the 40 foot right-of-way strip and of the various parcels sought to be taken and condemned through the Rindge Company portion of the Malibu Ranch in the Main Road case, segregating this strip and these parcels into numerous sections corresponding with the nature and character of the land that was embraced in such sections, in the same manner that he segregated the strip and parcels in the

3685 May K. Rindge portion, giving the acreage of each section, the value per acre of each and the value in dollars and cents of each. These segments or sections were designated by the witness as "arbitraries."

He further testified that where the right-of-way crosses Walnut Canyon there was a small running stream, and two watering troughs on the south side of the old road supplied by a pipe from springs further up the canyon; that these
3686 troughs are to the north of the proposed right-of-way; that there is a four barbed wire fence on steel posts on the northwest side of Walnut Canyon which leaves the three troughs to the south, or outside of the fence; that the proposed road drops into Trancas canyon through a strip of pasture land, the right of way crosses Trancas Canyon and Trancas Creek to the south of the wind-mill, leaving the watering trough on the
3687 north side. This wind-mill and trough are south of the present road, which has a fence on the north side; that Lachusa and Los Alisos, Encinal, Solstice, Corral, Malibu, Carbon, Escondido canyons have running water, and that there is a cienega between Escondido and Ramirez with water in it.

That the forty-foot right-of-way strip through the Rindge Company portion of the ranch contained 78 acres of the value of $6,438.91; that the various parcels in that portion contained

1233

3688 39.70 of the value of $1,278.77; that the total value of all of the property sought to be taken from that portion of the ranch in the Main Road case (to which all of this testimony refers) was $7,717.68.

He further testified, both as to the May K. Rindge portion and as the Rindge Company portion, that neither would suffer any severance damage, in his opinion, from the taking of the
3689 right-of-way strip, and the sundry parcels sought to be condemned in the Main Road case.

His total valuation of all of the property of the Hueneme, Malibu and Southern railway proposed to be taken in the Main Road case was $138.92, with no damage to the remaining property of that company by reason of severance.

Certain photographs which the witness testified correctly represented certain views along the proposed right of way of the main road, con-
3690 taining on the back of each a description of what each represented, were offered and received in evidence without objection, and marked Plaintiff's Exhibits J-1, 2, 3, 4, 5, and 6, respectively and are among the exhibits in the Main Road case to be certified up by the clerk pursuant to stipulation.

The witnesses valuations as to the property sought to be taken for the Alsos Canyon road were as follows: Forty-foot strip right-of-way, 8.099 acres, at $15 an acre, total $121.48;

3691 Parcels, 18.181 acres, at $15 an acre, total $272.70.

That assuming that the proposed road up the Los Alisos Canyon will be fenced wherever a fence is necessary, he thinks that the remaining property of the Rindge Company will not be damaged by reason of the severance therefrom of the portions thus taken for the road.

That the proposed road, where it passes
3692 through a corral near Malibu Creek, does not take or trench upon a Fairbanks-Morse weighing scale.

Certain pictures showing views of the proposed Alisos Canyon road were put in evidence, and marked Plaintiff's Exhibits K-1 to K-6, both inclusive, and are among the exhibits to be certified up by the clerk.

Cross-Examination.

The cross-examination of this witness largely
3693 brought out testimony in substance and effect the same as that given on his direct examination.

He testified that as a matter of fact he had never had an opportunity afforded him, in the last five to eight years of observing the effect upon cattle of a fenced road cutting their range in two, except his personal observation in driving through stock highways on fenced roads; that he never stopped to observe the habits of the cattle in going to and from water or grazing

3694 up to water and back, and that his observation was nothing more than the appearance of the cattle on either side of the road without reference to their general movement in feeding; that he himself had not been in the stock business, but that he has an uncle who has been in the stock business for twenty years with whom he had visited and talked three or four times a year; but that he had never gone out to watch the stock or study their habits.

3695 He also testified that his reasons generally for his opinion that the segregation of the ranch by the construction of the contemplated roads through it in the manner proposed would not be a damage or detriment to the ranch were because he believed that the ranch placed on the market with this road running through there on both sides would bring more money and find a readier market than it would now; and that in

3696 so testifying he was assuming that the purposes for which it was then being used were the purposes for which it is best adapted. That in making his valuation which he has testified to, both on the May K. Rindge portion and the Rindge Company portion, he took into consideration the fact that in many places these roads intersect and cut into small portions of land. That he didn't add anything to his value by reason of the segregation. That his values are absolutely free from any consideration of segregation.

3697 That he doesn't believe they are hurt at all. That he placed a value on the land that he thought was proper, without regard to any segregation. That his valuation, or the valuation which he put upon it in the condition in which he found it is irrespective of whether the road is built or not. That he has not increased his value because he thought there might be a possibility of damage by reason of the construction of a fenced road. That he doesn't think the added difficul-
3698 ties of turning where the fences cross would damage the land. That he took that into consideration. That the knowledge which he has of the matter of interference of that kind, is that he knows of many long narrow strips of land being cultivated similar to these strips. That the narrow strips which he refers to are narrower than this narrow strip will be on the Malibu Ranch. That they are being cultivated
3699 and he believes that these can be conveniently cultivated too. That if those narrow strips which are narrower than those on the Malibu Ranch were again cut in two, it would depend on the width of them whether or not that would interfere with cultivation. If it took three quarters of them for the road, it might. If you ran a straight fence through them so you had to turn when you come to that fence, it would make it harder to cultivate. That you could plow the long way. That he doesn't think it

3700 would add to the expense of cultivation. That in his opinion, these strips will not be damaged by having a road through them. That he doesn't think the cost of cultivation would be increased by it.

The witness futher testified that he had made a rough estimate of the reasonable market value of both the May K. Rindge and the Rindge Company portions of the ranch as a whole, which valuations were as follows:

3701 Total value of the May K. Rindge portion, $89,900, segregating it into 150 acres of bean land at $200 an acre, $30,000; 90 acres of bean land at $300, $27,000; 5 acres of lemon groves at $1000 per acre, $5000; 50 acres of barley land at $50 per acre, $2500; 20 acres around the home place in ornamental trees and shrubs at $100 an acre, $2000; 1535 acres of mountain range at $15 per acre; $22,950; 15 acres of beach

3702 land at $10 per acre, $150; total, 1900 acres, $89,950. That the method he used in arriving at his figures of the value of this ranch is a usual and absolutely proper method by which to estimate the value of an entire tract; that, in other words, it is a usual and proper method to take a segregated piece and estimate the value for specific purposes for the sake of finding out what they will produce independent of their value in relation to each other.

3703 Total value of the Rindge Company, $51,000, segregating it into 8700 acres of grazing land at $15 an acre, $130,500; 1300 acres of bean land at $200 an acre; $260,000; 25 acres of alfalfa land at $350 an acre, $10,500; 1000 acres of hay land, at $50, $5000; 25 acres of alfalfa land at $350 an acre. That the $200 an acre for the 1300 acres of bean land is just an average price placed on the 1300 acres. That this is a calcu-
3704 lation for estimating the income and that he put it in at this price for that purpose. That this is just a lead pencil memoranda for the purpose of arriving at the probable income value.

That the lead pencil memoranda which he used in answering questions as to the value of the various portions of the May K. Rindge and Rindge Co. property does not purport to be full and complete, but is just a rough memoranda, complete as far as they go. That he figured
3705 that the income would be 8½% net on $90,000 for the May K. Rindge property, and 6% net on $451,000 on the Rindge property. That assuming that the main road, that is, the one from Los Flores to the Ventura county line, and that the Los Alisos Canyon road running from the northern boundary of the ranch to its intersection with the main road near Lachusa, are fenced, that would not make any difference as to the matter of damage by segregation. It makes no difference in the market value of

3706 the property. If it made any difference in the market value of the property for the purposes for which it is now used, it would benefit it, and that is for the purpose for which it is used now and on which I calculate its values. That assuming that there are runways for cattle under the proposed Los Alisos road, he doesn't think it would make it more difficult to handle the cattle. The cattle could work their way back and forth through the runways.

3707 *Redirect Examination.*

The witness on redirect examination testified that the automobiles in which he and his associates drove through the Malibu Ranch while they were there for the purpose of valuing the property had no effect on the cattle, except that they sometimes had to slow down and wait for them to get out of the way and sometimes had to drive them out of the way; that they saw and

3708 passed many cattle near, along and upon the ranch roads; but that they didn't pay any attention to the passing automobiles at all.

In addition to the witness Gardner, the plaintiff called three other real estate and appraisement experts, each of whom qualified as opinion witnesses on the issues of damages, both as to the matter of the lands sought to be taken in the right-of-way strips and the contiguous parcels, and upon the issue of damage by reason severance due to such taking, and the value of the improvements to be taken.

3709 These three witnesses were,—

E. S. BUTTERWORTH,

ROBERT M. ALLEN, and

PAUL A. CRIPPEN.

Each gave testimony substantially to the same effect and in the same manner as to detail and segregation into parcels or "arbitraries" as the testimony given by Mr. Gardner.

3710 Their valuations were respectively as follows:

E. S. BUTTERWORTH.

May K. Rindge Portion:

Forty-foot right of way strip, $2,254.82; side parcels, $228.57; improvements taken, $153; May K. Rindge portion as an entirety, $182,000.

That in his opinion the remainder of the land of the defendant, May K. Rindge, will not be damaged by reason of the severance therefrom of the land sought to be taken in this action;
3711 not in addition to the values that he has put upon the land. That he has given the values of what the county seeks to take, and that he thinks the remainder will not be damaged by the taking.

Rindge Company portion:

Forty-foot right of way strip, $6438.91; side parcels, $1,278.77; improvements taken, $1,234.50; Rindge Company portion as an entirety, $413,475.

3712 That in his opinion the remaining property of the Rindge Company will not be damaged by reason of the severance therefrom of the portions sought to be taken in this action.

That the reasonable market value of the property of the Hueneme, Malibu and Port Los Angeles Railroad Company taken by the proposed main road is $138.92. That this includes the parcels. That in his opinion the alleged right
3713 of way of the railroad company not sought to be taken will not be damaged by reason of the severance therefrom of the parcels sought to be taken. That the value of the platform of the railroad taken is $15.00."

That the May K. Rindge portion consists of about

20 acres of beach land at $50 an acre $ 1,000
35 " " " " " $10 " " 350
10 " " " " " $25 " " 250
3714 500 " at Malibu Flat " $300" " 150,000
40 " of bean land " $200" " 8,000
1325 " " pasture land " $15 " " 198,750"

That the Rindge Company portion of the ranch consists of

8,675 acres of pasture land at $15 an acre, $130,125.
125 " " alfalfa " " $250 " " 31,000.
1,000 " " barley " " $50 " " 50,000.

3715 1,335 " " bean " " $150 " "
200,250.
235 " " beach " " $10 " "
2,350.

That he didn't use the assessed value in figuring his values on the property because he certainly would not, in this case, consider the assessed values were absolutely correct. If they were, it would be very simple to get at the value
3716 of all kinds of property in the country

That in his opinion the highest use to which the Malibu Ranch could be put would be for the raising of lima beans on the portion available and stock for the balance, in the mountains. By the highest use he means the use of the property which would afford the greatest financial returns. That the purposes for which he thinks the property best adapted are also the purposes for which he thinks it will continue to be best
3717 adapted in the immediate future.

The specific valuations were in the Main Road case.

Los Alisos Canyon road, 40 foot strip, $121.48; parcels, $151.22.

That in his opinion the remaining property of the Rindge Company will not be damaged by reason of the severance therefrom of the land sought to be taken for the Los Alisos road.

That as to the opening or construction of the road through the May K. Rindge portion of the ranch, and as to the opening or construction of the road through the Rindge Company portion of the ranch, also as to the opening or construction of the road at the points where it impinges upon the railroad right of way, that in his opinion the opening or construction of this road or these roads, also as to the roads to the west, would not be any detriment to the parcels remaining, or, in other words, that the remaining parcels of land would not be damaged by reason of the segregation. That the reasons for that opinion are, in the first place, it is absolutely necessary, in order that the ranch should be of any value whatsoever, to have a road leading to it or from it. The road as it exists now, while it is not entirely followed by the new road, does follow in some instances what is deemed at least to be more advantageously located on account of, or for reasons of permanent upkeep. That he means the new road as proposed. That he means permanent upkeep by the county. That inasmuch as a road has to be there to give any value at all to the ranch commensurate with its worth, it is, of course, advantageous to have a road where the upkeep would be reduced to the minimum. That he assumes that there would be quite an item of upkeep to the road as it is located now, even for the purpose for which

3721 the road would be used now. That he bases that assumption upon knowledge of the general conditions at the foot of mountains. That he knows there is water coming down and it certainly must wash across the road,—the road that is there now. That that applies to the road on the May K. Rindge portion as well as on the Rindge Company portion. That the agricultural land, that land that can and should be, in order to get its highest value, devoted to
3722 the raising of beans or barley, principally beans, would necessarily need a road to it, which would have to be located either along the edge or along some place on the mesa, and it would be impracticable, in fact, impossible, to follow the ragged edge right on the edge of the bluff all the way along. So that there must be a severance—in order to maintain a road of any kind on the property, there must be a severance and the
3723 severance would not be any greater in the event of the new road than in the event of the present road or any other road that he would consider would have to be maintained. That another reason is the relief from the maintenance of the road. That he is aware that from Solstice or Sosto Canyon to Ramirez Canyon there are a number of fields in cultivation. That this proposed road neither touches nor runs through any part of those fields until it gets a short distance this side of Ramirez. That the same rea-

3724 sons for the road at that point did not prevail. That the element of engineering is a feature that enters into it there. That if there are any reasons why a road could not be maintained advantageously on the mesa opposite the canyon it would be better to divert it. That he has been over a very good ranch road, over the mesa, maintained by the Rindge Company. That it is not difficult to travel. That it is a very
3725 good road, with the exception of a few canyons that have to be crossed. That the reasons which he has given do not apply to the road from the ranch line on the north down to where it intersects the main road in so far as its damaging or not damaging the ranch is concerned. The reason that he has for his opinion that that road would not damage the ranch is the fact that the canyon there is so steep that in his opinion no cattle would cross the canyon. That he
3726 didn't know of any other canyon so steep. That he doesn't think there is any point on the west side between Los Alisos Canyon, from the point where the road starts until it reaches the main road at Lachusa Canyon that the cattle could cross.

That in arriving at his figures he considered these values which he has given on these various parcels, in connection with the ranch as a whole. That in considering them that way he considered the purposes to which the ranch is now

3727 being put, as well as the purposes to which it could be put.

ROBERT M. ALLEN.

May K. Rindge Portion:

Main Road Case:

Forty-foot right of way strip, $2,417; side parcels, $228.57; improvements taken, $168; May K. Rindge portion as an entirety, $182,000.

That in his opinion the remaining property of
3728 Mrs. Rindge will not be damaged by reason of the severance therefrom of the property sought to be taken.

Rindge Company Portion:

Main Road Case:

Forty-foot right of way strip, $6,456.19; side parcels, $1,278.77; improvements taken, $633.25; Rindge Company portion as an entirety, $415,000.

3729 That in his opinion the remainder of the Rindge Company's property not taken will not be damaged by reason of the severance therefrom of the portion which is sought to be taken.

Los Alisos Canyon Road: same as Butterworth.

That in his opinion the remaining property of the Rindge Company will not be damaged by reason of the severance therefrom of the property sought to be taken for the Los Alisos road.

That in his opinion the reasonable market value of the land within the 40 foot strip which

3730 is taken from the right of way of the Hueneme, Malibu and Port Los Angeles Railroad Company is $131.23
That the value of the parcels is..... 7.69

Total $138.92

That the remaining portion of the alleged right of way of the Hueneme, Malibu and Port Los Angeles Railroad Company not sought to be taken will not be damaged by reason of the
3731 severance therefrom of the portions that are sought to be taken.

That in his trips through the Rindge Ranch he has observed cattle. That he has had occasion to travel over the roads on the Malibu Ranch in an automobile. That every day that he was up there he traveled some part of the day in a machine, either coming back or going to the location that he started to work from. That the automobile passed near cattle on these
3732 occasions. That sometimes they would be lying down in the road. That when the automobile approached or passed them it had no effect upon them. That they would get up sometimes, and that he would make some of them get up when they were lying down. That all of them would not get out of the way until they were urgently requested to do so, but some had to be roused; some of them had to be prodded up. That he didn't find that any of them showed any sign of fright at the automobile. That he has traveled

3733 in an automobile over public roads and over roads that went through other ranches on which there were cattle, and that he has passed near cattle. That he never noticed any great fear of cattle. Some would be a little more frightened, possibly. They don't pay any attention to an automobile any more. That he has observed cattle upon the road itself outside of the Rindge Ranch. That the automobiles didn't seem to have
3734 any effect upon them at all; they didn't frighten them. That none of them seem to be pale or worried looking.

That the property of May K. Rindge consists of 20 acres of beach land at $50 an acre .....$ 1,000
35 acres of beach land at $10 an acre 350
10 " " bean " " $250" " 2,500
500 " " at Malibu Creek at $300 an acre 150,000
40 " " bean land at $200 an acre 8,000
3735 1325 " "pasture land at $15 " " 19,875

That the acreage is rough estimate, but that the values are correct.

That the Rindge Company's portion of the land consists of
8700 acres of pasture land at $15 an acre.$13,050
125 " " " " " $250" " 31,250
1000 " " barley " " $50 " " 50,000
235 " " beach land " $10 " " 2,350
1500 " " bean " " $150" " 225,000
500 " " best bean " " $300" " 150,000

May K. Rindge Portion:

Main Road Case:

Forty-foot right of way, $2417.37; side parcels, $228.57; improvements taken, $261; May K. Rindge portion as an entirety, $108,380.

That in his opinion the property of May K. Rindge which is not sought to be taken will not be damaged by reason of the severance there-
3737 from of the land which is sought to be condemned. There is no damage to the May K. Rindge ranch provided a proper fence is put in. That is, I am assuming that the road will be fenced.

That the items making up the total value of the May K. Rindge portion of the ranch consists of 5 acres, lemon grove, at $2,000 an acre ..... $ 10,000

60 acres bean land, Malibu Flat, at $500
3738 an ac. 30,000

30 " " " " " " 400
" " 12,000

150 " " " " " " 200
" " 30,000

1692 " grazing land and beach land at $15.00 an acre..... 25,380

Part of it improved by eucalyptus trees 1,000

$108,380

3739 Rindge Company Portion:

Main Road Case:

Forty-foot right of way strip, $6,438.91; side parcels, $1,278.77; improvements taken, $1393; Rindge Company portion as an entirety, $413,-420.

That in his opinion the remainder of the Rindge Company's property which is not sought to be condemned will not be damaged by reason
3740 of the severance therefrom of the portion which is sought to be taken, if it is fenced where necessary and gates put in.

That the elements entering into the total value of the Rindge Company's portion of the ranch are:

90 acres of bean land (Corral) at $180 an acre	$ 16,200
50 " " " " (beyond Escondido) at $200 an acre	10,000
3741 150 " " " " (Ramirez) at $200 an acre	30,000
100 " " hay " " 50 " "	5,000
1000 " " " " (Zuma) " 50 " "	50,000
450 " " bean " (Trancas) " 175 " "	78,500
300 " " " " (Encinal) " 150 " "	45,000

3742 30 " " alfalfa (Los Alisos) 350 " " 10,500

50 " " bean land (just beyond Los Alisos) at $180 " 9,000

15 " " hay " (just beyond Los Alisos) " 50 " 750

100 " " bean " (Nicholas) " 150 " 15,000

75 " " " " (Sequit) " 100 " 7,500

3743 25 " " " " (just this side of Ventura county line) at $100 an acre 2,500

8900 acres pasture land at $15 an acre. 133,500

Los Alisos Canyon road; same as each of the other witnesses of the plaintiff on values.

That assuming that the Los Alisos road is constructed, the property remaining would not be damaged by reason of the taking of the lands necessary for the roads.

3744 That the reasonable market value of the property of the Hueneme, Malibu & Southern Railroad included within the 40 foot strip taken is $131.23

That the value of the parcels taken is.. 7.69

Total $138.92

That the value of loading platform taken is 15.00

That the remaining portion of the so-called right of way of the railroad would not be dam-

3745 aged by reason of the s verance therefrom of the parts sought to be taken.

The witness

PAUL A. CRIPPEN,

on his

Direct Examination,

after having testified to his familiarity with certain ranches, testified:

"Those are the only ranches that I am fa-
3746 miliar with enough to make a comparison with the Malibu. I might add, if I might be permitted, that there is no ranch that I know of similar to the Malibu except in some minor features;"

It is a fact that almost all ranches differ; so much so that it is almost futile to compare them at all except in a general way as to the area and what they will produce. You have to make an
3747 individual study of each piece of property. Each ranch is a different proposition entirely from any other property.

On his

Redirect Examination

the following transpired:

By Mr. Burnell:

Q. You have been on stock ranches and seen cattle and observed what they were doing and how they acted?

A. Yes.

3748 Q. In arriving at the various opinions which you have arrived at as to the values of the different portions of property in the May K. Rindge portion, have you considered the highest use to which in your opinion those various pieces of property may be put?

A. I have.

Q. Does that apply to all of the property?

A. Yes.

3749 Q. What, in your opinion, is the highest use to which the property of May K. Rindge can be put now or in the immediate future?

A. A general ranch. It is suitable for the raising of all the things that they are now raising, lemons, hay, grain, beans and stock.

Q. What have you to say with regard to the Rindge Company property, as to the purposes for which it is best adapted?

A. I think it is being put to the best use at 3750 this time. I mean by that that the crops and things which are being raised and produced are the most appropriate things for that property.

That on his various trips through the Malibu Ranch, he has observed the cattle. That he has traveled over it in automobiles. That the automobiles had no effect upon the cattle. That they didn't seem to be frightened. That they didn't look worried. That some of them were right in the road, laying down in the road, and once or twice they had to get them up and get them out

3751 of the way so that they could pass along. That they didn't stampede at all. That they had to be shooed out of the way. That he had been on other ranches where cattle and stock were kept. That on some of those occasions he had traveled in automobiles. That he has passed near the cattle. That the passage of the automobile didn't have any effect upon the cattle. That they didn't appear to be frightened, or
3752 worried, or express alarm in any way.

That a public highway, as an improvement, increases the value of land in its vicinity.

That on the various ranches where he had been and examined and investigated and studied, he has found roads running through them; either public or private. That there was stock on some of them. That the public roads were fenced, and some of the private roads were fenced in the fields. Along the private roads
3753 there would be fields that were fenced off. That is, where the road passed alongside of a field, the road would be separated from the field by a fence, or where it was advisable to have the ranch divided up into several fields or sections for the handling of stock or to keep stock out of fields that were improved and growing various things, they would be fenced off. That the cultivated land on the Malibu Ranch, where the fields or portions of cultivated land are cut by the proposed main road, in his opinion it might,

3754 in two or three instances, make some slight inconvenience in the matter of cultivation, but he doesn't see how that inconvenience could be reckoned in any appreciable amount of money. That he thinks it is more inconvenient than the damage to the value of the land. That he thinks the value of the land is not diminished. By inconvenience he means that it is a matter of personal inconvenience to the man who happens to be handling the plow, but he doesn't think that
3755 it would result in any depreciation of the value of the property by reason of the severance, and that it would be so small that it would not be reckoned in money.

By Mr. Burnell:

Q. I believe in answer to some questions you testified that you had appraised several ranches for stock ranches having roads through them. A. Yes.

3756 Q. What did you observe was the effect of those roads on the value of the ranches?

Mr. Anderson: Object to that as immaterial unless it is shown that he knew the method in which the ranch was being used and how the stock crossed and recrossed.

The Court: I think so; the conditions might be entirely different. Objection sustained.

Q. On any of those ranches were the roads that ran through similarly situated with regard to the ranch itself as is the proposed Malibu road with regard to the Malibu Ranch?

3757 A Juror: When you considered this land, did you consider it a stock ranch or grain ranch?

A. As a mixed ranch, general ranch.

A Juror: Do you consider it a grain ranch or a cattle ranch? Do you consider that a stock ranch? A. Not as a stock ranch, no.

A Juror: Would the value be improved by a roadway through there? A. It will, yes sir.

A. That is such a general question, I don't
3758 believe I can answer it. They had roads running through them, to them and along side of them, but as to running through in a similar manner—

Q. By that I mean did any of the roads through the ranches, from one part to another, crossing the ranches, dividing it into two sections? A. Yes.

Q. Did you observe how cattle crossed from one side to the other? A. I didn't observe them
3759 driving them across.

Q. Did you observe them going across? A. No.

Q. What, in your opinion, was the effect of those roads which cut the ranch in two, what effect did it have upon the value of the ranch?

Mr. Anderson: Objected to as incompetent, irrelevant, and immaterial; no foundation laid.

The Court: Objection overruled.

Mr. Anderson: Those questions are not in issue.

3760 The Court: It is simply for illustration.

A. A good road or highway—

Mr. Anderson: Now wait a minute. We object to the form of the answer.

The Court: Yes. You see, that is the evil of this line of testimony.

A. The roads on those ranches, or the effect of the roads, are beneficial.

The Court: That is not responsive. Read
3761 the question.

(Question read.)

Q. Have they made the market value less or not? A. Increased the market value.

Exception No. 65.

A Juror: When you considered this land, did you consider it a stock ranch or grain ranch? A. As a mixed ranch, general ranch.

A Juror: Do you consider it a grain ranch or a cattle ranch? Do you consider that a
3762 stock ranch? A. Not as a stock ranch, no.

A Juror: Would the value be improved by a roadway through there? A. It will, yes sir.

G. E. LEWIS,

recalled on behalf of plaintiff in rebuttal, testified:

That he had farmed all of his life; that he was 61; that he owns a ranch on the state highway between Los Angeles and Ventura—a farming and stock ranch altogether; that he has about

3763 a hundred head of stock on that ranch, cattle, horses and mules; that he has carried two or three hundred head, and is familiar with the business of stock ranching; that the state highway runs right through his ranch.

Q. From your experience in the stockraising business have you been able to form an opinion as to whether or not a public highway running through a stock ranch is a detriment or not?

3764 This was objected to by the defendants on the ground that it is too general; that the mere question of running through a stock ranch without giving the location and conditions is utterly immaterial.

The Court: That is for cross-examination. Overruled.

A. I have.

Exception No. 66.

Q. What is that opinion?

3765 Mr. Anderson: Same objection.

The Court: Overruled.

A. It is not.

Exception No. 67.

This witness further testified that he had been on the Malibu Ranch; and that the ranch would not be damaged, in his opinion, by the proposed right of way in the Main Road case passing through it; that there is one opening under the highway on his home place; that he has observed whether cattle, horses and other stock pass under

3766 the road through this opening; that they go through voluntarily from one field to another, after being driven for a time or two; after that there is no trouble at all; that many automobiles pass on the state highway; that he never observed any particular effect upon the cattle and other stock by reason of the automobiles; that he had not exactly been in a position to observe the cattle when automobiles were passing; but if the automobiles scare them at all, it is the
3767 noise of the concrete; that so far he has not found that the automobiles on that road have any bad effect on the cattle; that it has not prevented them from passing and repassing through the opening; that that road with the openings under it passing through his ranch has been there over three years. That he had another one there that the county put in about five years before this one. That it had no effect
3768 whatever upon the cattle passing, the same as the one on the highway. That there had been another culvert or opening; that he didn't think that he found that his cattle have become poor or lost weight on account of any passing through the openings.

Cross-Examination.

On cross-examination he testified that his cattle were Holstein and Jersey; dairy stock; if properly treated, tame cattle, not what are known as wild range cattle. That he has about

3769 600 acres of the home place, and rents about 6000 acres.

Redirect.

That he had had about 400 head of range cattle belong to a neighbor, most of which ran back and forth, and went through the culvert, with very little trouble about it. That the cattle had to go under the culvert to get water.

J. C. PATTON,

3770 recalled, by consent, on behalf of defendants, testified:

That since last on the witness stand he had investigated the location of certain living springs which he, at that time, thought were in Marie Canyon; that he found that they were located in the canyon just west of Marie, known as Puerco; that the springs in question are above, to the north of, the proposed highway some
3771 fifty or seventy-five yards; that during the dry season those springs do not flow down south of the proposed highway; that there are no springs in Marie Canyon near the proposed road; that he had examined Marie Canyon since on the witness stand, and that it was dry to the bottom; that the springs he spoke of were then running; but that was a condition which did not continue in the dry season.

3772 *Cross-Examination.*

That he examined Marie Canyon for the purpose of finding if there was water, some half mile or above the forks of the Marie.

C. H. FULLER,

a witness called on behalf of the plaintiff in rebuttal, being first duly sworn, testified:

That he was in the cattle and Pioneer Truck business; that he had been in the cattle business
3773 45 years; that they owned the Pioneer Ranch Co., at Corona, a couple of thousand acres; have a ranch in Mexico, and one up toward the Santa Anita Ranch leased, of about 16,000 acres; that the Mexico ranch was about 500,000; a ranch known as the Jalma, of about twelve or thirteen thousand acres; the San Marcus ranch of 42,000; and six or seven ranches in Arizona; that they have nearly 30,000 head of cattle or
3774 better; that all of these ranches except the Santa Anita have public roads through them.

Q. Assuming that the territory enclosed within the light purple line on the map (Exhibit 6) to the north of what is denominated Pacific Ocean, is the Malibu Ranch; assume that on the northern part of the ranch adjoining the purple line extending down toward the ocean where you see the contour lines on the map, assume that there are hills and mountains ranging from a few hundred feet to a half mile back from the

3775 ocean back toward the purple line; assume down toward the ocean along practically the whole strip of the ranch there are mesa lands; assume that cutting this ranch, down through it, at various points, there are canyons and barrancas; assume that there is a public road built from the eastern end of the ranch upon the line which is red upon the map going the full length of the ranch; assume that the road is fenced wherever
3776 necessary; assume that at thirteen different canyons as the road goes through the ranch there are bridges over the canyons with a clearance of seven feet, in width from six feet; assume that the road is twenty-two miles long; assume that the ranch varies in width from a half a mile to perhaps two and a half miles; assume that upon that ranch there are about one thousand head of cattle. Have you an opinion as to whether or not the building of that road upon
3777 the approximately red line that I have indicated would be, or would not be, a damage to the ranch as a stock ranch?

Mr. Anderson: We object to that, if the court please, on the ground that there is no foundation laid; on the ground further that the question does not contain sufficient elements; on the further ground that the question of necessity of fencing is to some extent left to this witness; who has no knowledge of the situation,

3778 and cannot pass on it—"fences where necessary."

The Court: Do you desire to examine him on the *voir dire?*

Mr. Anderson: No, not at all; I simply make that objection.

The Court: Overruled. Now, the question is, Mr. Fuller, whether under that assumption of facts you have an opinion. That question must be answered by yes or no.

3779 A. Yes.

Exception No. 68.

Mr. Vallee: Now, what is that opinion?

Mr. Anderson: We object to that on the same grounds.

The Court: Same ruling. Overruled.

A. Well, my opinion is that I think it would be a benefit if it was properly fenced as a road.

Mr. Anderson: Wait a minute. He didn't

3780 ask for any reasons.

The Court: What was that last statement?

(The last answer read by reporter.)

A. Culverts to let the stock go underneath, where they can reasonably get to water. I have several of those things—

Exception No. 69.

The Court: Wait a minute.

Mr. Anderson: Just a minute. I move that that be stricken out.

The Court: Stricken out.

3781 The witness further testified that he did not know that he could tell just then whether or not on the public roads crossing his ranches bridges were provided for cattle passing through from either side; that they had several of them on some leased lands where they used them that way, but took them out—bridges underneath which cattle passed; that he observed no effect upon the cattle from the fact that they had to go
3782 to and fro under such bridges; that after they went through once they would go freely; that water was on one side of the road only, so that if they didn't go under the bridges they would get no water; that when they went over they had to go back to the other side to pasture; that did not have any bad effect on or reduce the weight of the range cattle.

That automobiles passing over those bridges had no effect upon the cattle that he had no-
3783 ticed; that he never had observed cattle going to sleep under the bridges.

Cross-Examination.

On cross-examination by Mr. Newby the witness testified:

That the Pioneer Ranch near Riverside or Corona had about 2000 acres; that it has public roads through it. That it used to be nearly all one ranch, with a road on one side of the ranch for about three or four miles. Then there was one road about three-quarters of a mile. Then

3784 they wanted a road on North Main street and he gave them a right of way through there; they then wanted another road about a half a mile from there and he gave it to them. That they keep stock on the ranch; that they have had as many as 4500 head, and once as many as 5500; that they were young stuff, range cattle brought in mostly from Arizona to keep them from dying; that there was water all over this
3785 ranch; the road was fenced with barbed wire and railroad posts; that the method of taking the cattle across the road was through gates; that there were no bridges or culverts. That the cattle are passed by driving them through the gates. That upon lands that they had leased, there were roads where there were culverts or bridges requiring the cattle to be passed under. That they took them out because they lost the lease, not because they desired to take them out.
3786 They lost the land and didn't have any more use for the bridges. That there were fifteen or twenty thousand acres there. That when they were conducting that portion of the ranch they didn't have water on both sides of the road, but only on one side. That the cattle had to pass from one side to the other, under a passage way about six or eight feet wide. That they passed under that. He didn't remember how many cattle there were, but there must have been seven or eight or nine hundred; only one bridge,

3787 about eight or ten feet long, and he did not think it exceeded over six feet high, five or six feet. At some times it is difficult to get them through the first time. That they had cattlemen in charge of the stock on that ranch.

Q. Now, passing these cattle through the gates requires some cost and expense, does it not? A. Well, you have to round them up and drive them across the road, a 60 ft. or 40 ft. 3788 road, and have a man on each side.

Q. If the road had not been fenced there would have been nothing to have prevented the stock from running at will over the ranch? A. No.

Q. Do you, as a stock man, regard that as some advantage? A. Well, it might in one way. I consider the road worth more than what five or ten minutes' work in driving across the road is worth.

3789 Q. Is that true with reference to the question propounded by the counsel for plaintiff? Is that the reason you say it would not be a damage, that the road would more than compensate, is that what you mean? A. That is the way I look at it.

Q. You do think that if the ranch were considered as a separate and independent proposition and was not on the market for sale that it would injure it as a stock ranch to have a fenced road through the middle of it? A. Well, do

3790 you mean a road through the stock ranch in the center of it?

Q. Yes. A. If it was not for sale?

Q. Yes. A. Well, I don't know about that. If it was my ranch I would consider a road pretty valuable through it.

If he had a stock ranch he would want roads through it and fenced; that he thought it would add to the value of the ranch for stock purposes, because they had to change stock all the time
3791 anyway in different fields; that every stock man in the country changes his cattle, and he follows right up with the good cattle and comes along behind with the poor cattle, and they keep that way the best feed for the good cattle and try to fatten them and get them off. That anything you want to know about stock he can tell you about. That it ain't no boast; that every ranch has to be fenced; that he would have his
3792 fences with a field so it would suit him. That he has given his personal attention to his 500,000 acre ranch in Mexico. That he has paid attention to all of them with the exception of the last three years. That he has run 'em all and took charge of them. That he was in Mexico not long ago; two years or a little less than that. That so far as the topography of the Malibu Ranch is concerned, he has no knowledge as to where the canyons are, or where the barrancas or waters are. That he doesn't know much

3793 about the Malibu Ranch. That all the answers he has given are based on the hypothesis that has been submitted by counsel, so far as the Malibu Ranch are concerned. That he has given here what he has been asked his opinion. That he had given rights of way for two roads through his Corona Ranch.

Redirect Examination.

Q. Did the roads built through this Pioneer
3794 Ranch when you gave them these rights of way damage the ranch?

Mr. Anderson: We object to that as not redirect examination; on the further ground that this witness is not qualified to testify on market value.

The Court: The question relates to the stock ranch feature and not the market value.

Mr. Vallee: Certainly.

The Court: Overruled.

3795 (Exception No. 70.)

That in his experience as a cattle man, cattle are turned loose in order to have them fattened. That they are turned loose; that they follow them up with feed; it is on what is called range cattle, range beef. That this is done on ranches which are fenced.

At the close of the evidence the court announced that the issues relating to damages only would be submitted to the jury, and that the remaining issues would be decided by the court.

3796 Thereafter, on the 6th day of December, 1918, at the request of all parties, and with the consent of the court, the jury was taken upon the Malibu Ranch, accompanied by the court and the court officers, the attorneys for the respective parties, and certain of the witnesses who were familiar with the various matters on the ground that had been testified to; and the jury was taken through the ranch in automobiles, stopping and
3797 getting out at certain points of special interest, the route traversed being the private ranch road now on the ranch and shown on Exhibit A, from Los Flores Canyon to the Ventura county line; and the location upon the ground of the proposed main road right-of-way, as far as was possible, was pointed out to the jury, as was also the location upon the ground of the Alisos Canyon road right-of-way, and the various other matters upon the ground, the locations of
3798 the various cultivated lands, and such other things as were deemed to have any bearing upon the issue of damages, whether for the taking of the properties sought to be condemned, or the damage, if any, to the remaining property by reason of severance, were also pointed out to the jury.

"That thereafter and on the 16th day of December, 1918, the following stipulation was entered into and filed with the clerk of the court:

3799 'Title of Court and Cause.

STIPULATION IN RE HUENEME, MALIBU AND PORT LOS ANGELES RAILROAD COMPANY.

'It is hereby stipulated and agreed by and between the plaintiff herein and the defendant Hueneme, Malibu and Port Los Angeles Railroad Company, a corporation, that said defendant claims no damages for the taking of, or for damage by severance, or otherwise, to any of
3800 its property involved in the above entitled action, and that the jury, in the above entitled action, may find in accordance with this stipulation.

Dated this 16th day of December, 1918.

A. J. HILL,
County Counsel.
Deputy County Counsel.
Deputy County Counsel.
Attorneys for Plaintiff.

3801 ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Said Defendant.'"

That thereafter, on December 16th and December 17th, 1918, the issues as to damages only, both for the taking of the property sought to be condemned and for the damage, if any, resulting in each case from the severance due to the taking of such properties, were fully argued to the jury by counsel for all of the parties.

3802 That the court, at the conclusion of said arguments, and on the 18th day of December, 1918, gave the following instructions to the jury:

"Gentlemen of the Jury: The instructions which will now be given you constitute the law of this case, and under your oaths you are bound to accept such, in considering the evidence in this case and reaching a verdict herein.

"This action is equally important to the plaintiffs and the defendants, for while the right of
3803 eminent domain, being an incident to sovereignty, is important, it is not more so than the right to own, possess and enjoy private property and to be secure in the ownership, enjoyment and possession thereof. Our form of government and all our laws forbid the state or any individual from taking private property from citizens without just compensation, and you must ever keep in mind throughout your
3804 deliberations the equal importance of this case to the plaintiffs and the defendants.

"The instructions must be taken as a whole and in their entirety, and must be construed and considered together, and in relation to one another, and no single or several instruction, or instructions, should be considered to the exclusion of any and all others given herein.

"Given by the court.

"McCormick.

"You are instructed that you are now trying three several actions brought by the county of

3805 Los Angeles as plaintiff, aaginst the Rindge Company, a corporation, and others as defendants for the purpose of condemning for highway purposes certain parcels of real property owned by the defendants.

"That one of these cases has been known and referred to throughout the trial and proceedings, and will be hereafter referred to in these instructions, as the main road case, and is the
3806 case in which it is sought to condemn for highway purposes a strip of road 40 feet in width, commencing at the easterly line of what has been known and referred to herein as the Malibu Ranch or Rindge Ranch, and running thence in a general westerly direction through the entire length of said ranch to the Ventura county line, and ending at a point where the Ventura county line and the westerly line of the said Malibu or Rindge Ranch coincide and at which
3807 said point the said Malibu or Rindge Ranch terminates; and that in said main road case the plaintiff also seeks to condemn for highway purposes 147 additional parcels of land contiguous to the said 40 ft. strip, and lying on either side thereof;

"That another of said cases has been known and referred to throughout the trial as the Alisos Canyon road case and will be so referred to hereafter in these instructions, and that in and by said last mentioned case the county of Los

Angeles as plaintiff seeks to condemn a certain parcel of land 40 ft. in width, and running from the northerly boundary line of said Malibu or Rindge ranch in a general southerly direction, down to and intersecting with the said main road herein above described at a point a little west of what has been testified to and described as Lachusa Canyon in said ranch; and also two additional parcels of land adjoining and lying on either side of the said last mentioned 40 ft. strip, all for highway purposes.

"That the third and other of said cases has been known and referred to throughout the trial of this case, and will hereafter in these instructions be referred to as the beach road case and that in and by said beach road case the plaintiff seeks to condemn for highway purposes a 40 ft. strip of land beginning at a point slightly north of the proposed 40 ft. right of way for the said main road, and at a point of intersection of said proposed beach road with the said proposed Aliso Canyon road, and running thence in a general southerly direction across said main road and along or adjacent to the easterly bank of that certain canyon referred to and described in the evidence as Little Aliso Canyon upon said Malibu or Rindge Ranch southerly to a point on the bluff immediately above the Pacific ocean, and thence in an easterly direction to a point near the easterly bank of the said Lachusa

Canyon, and thence in a southerly direction down to the beach of the Pacific ocean, and to the high tide line of the said Pacific ocean on said beach and also for highway purposes two additional parcels of land immediately adjoining and lying one on each side of said last described 40 ft. beach road proposed right of way.

"That the answering defendants in the said main road case and the defendants who have or claim an interest in the said real property sought to be condemned by the plaintiff for highway purposes in said main road case and herein above described are the Rindge Company, a corporation, May K. Rindge and the Hueneme, Malibu & Southern Railway, a corporation;

"That the only defendant in the Aliso Canyon road case, and the only person claiming any ownership or interest in the land sought to be condemned by the plaintiff for highway purposes in said case, is the Rindge Co., a corporation;

"That the answering defendants, and the only person having or claiming an interest or ownership in the land sought to be condemned by plaintiff for highway purposes in the said beach road case, are the Rindge Company, a corporation, the Hueneme, Malibu & Port Los Angeles Railway, a corporation, and the Hueneme, Malibu & Southern Railway, a corporation; but as to the two railway corporations there is no

evidence in the beach road case concerning any damages as to them.

"Defendants request. Given.

McCORMICK, J.

"It is the exclusive province of the judge of this court to instruct you as to the law that is applicable to the case, in order that you may render a verdict upon the facts in the case, as determined by you, and the law as given to you by the judge in these instructions. It would be a violation of your duty for you to attempt to determine the law or to base a verdict upon any other view of the law than that given to you by the court. On the other hand, it is your exclusive province to determine the facts in the case, and to consider the evidence for that purpose. The court cannot determine the facts, nor aid you in arriving at them, except by giving you the rules of law to be used by you in arriving at the truth. You are sole judges of the effect and value of the evidence. Your power, however, of judging of the effect and value of the evidence is not arbitrary, but is to be exercised with legal discretion and in subordination to the rules of evidence. You are not bound to decide in conformity with the declarations of any number of witnesses which do not produce conviction in your minds, against a lesser number or against a presumption of law or evidence which satisfies your minds; in other

words, it is not the greater number of witnesses which should control you where their evidence is not satisfactory to your minds, as against a lesser number whose testimony does satisfy your minds.

"In civil cases a preponderance of evidence is all that is required, that is such evidence as, when weighed with that opposed to it, has more convincing force, and from which it results that the greater probability is in favor of the party upon whom the burden rests.

"In weighing the evidence you are to consider the credibility of witnesses who have testified in the case. You are the sole and exclusive judges of their credibility. The conduct of the witnesses, their character, as shown by the evidence; their manner on the stand; their relation to the parties, if any; their interest in the case; their bias and prejudice, if any; their degree of intelligence; the reasonableness or unreasonableness of their statements; and the strength or weakness of their recollection may be taken into consideration for the purpose of determining their credibility.

"A witness is presumed to speak the truth, this presumption, however, may be repelled by the manner in which the witness testifies, by the character of his testimony, or by testimony affecting the character of the witness for truth, honesty or integrity, or his motives, or by con-

tradictory evidence. A witness false in one part of his testimony is to be distrusted in others; that is to say, you may reject the whole of the testimony of a witness who has wilfully sworn falsely as to a material point; and being convinced that a witness has stated what was untrue, not as the result of mistake or inadvertence, but wilfully and with a design to deceive, you must treat all of his testimony with distrust and suspicion, and reject it all, unless you shall be convinced, notwithstanding the base character of the witness, that he has in other particulars sworn to the truth.

"The testimony of one witness entitled to full credit is sufficient for the proof of any fact and would justify a verdict in accordance with such testimony even though a number of witnesses on the other side might testify to an opposite state of facts, if, from the whole case, the jury believes that the greater weight of the evidence considering its reliability and the credibility of the witnesses is on the side of the one witness as against the greater number of witnesses.

"You should not consider as evidence any statement of counsel made during the trial, unless such statement is made as an admission or stipulation conceding the existence of a fact or facts.

"You must not consider for any purpose any evidence offered and rejected, or which has been

stricken out by the court; such evidence is to be treated as though you had never heard it. You are to decide this case solely upon the evidence that has been introduced before you and the inferences which you may deduce therefrom, and such presumptions as the law may deduce therefrom as stated in these instructions, and upon the law as given you in these instructions.

"You must weigh and consider this case without regard to sympathy, prejudice, or passion for or against either party to the action. It is the duty of the jurors to deliberate and consult with a view to reaching an agreement, if they can do so, without violence to their individual judgment upon the evidence under the instructions of the court. Each juror must decide the case for himself, but should do so only after a consideration of the case with his fellow jurors, and he should not hesitate to change his views or opinions on the case when convinced that they are erroneous. If some of your number should conscientiously believe, after an entire comparison and consideration of all the testimony in the case, and of the instructions of the court, that the verdict should be for a particular party to the action, then such jurors should so vote; and if some of your number should likewise conscientiously believe, after such consideration, that the verdict should be for the other party to the action, then such jurors should so vote; but

3826 no juror should vote for either party nor be influenced in so voting, for the single reason that a majority of the jury should be in favor of such party. In other words, despite your duty to agree if such be possible, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict for or against either party solely because of the opinion of the other jurors.

3827 Given.

McCormick, J.

"An action brought for the purpose of acquiring private property for a public use by condemnation thereof is brought under what is known in law as the right of eminent domain, which may be defined as the right of the people or government to take private property for public use. This right includes the right to take private property for public highway purposes in

3828 the manner proposed in this proceeding. The Constitution of this state provides that private property shall not be taken or damaged for public use without just compensation being made or paid into court or the owner, and it is for the purpose of assessing and determining the just and fair compensation to which the defendants are entitled that you are called upon as jurors in this case.

Plaintiffs request. Given as modified.

McCormick, J.

"Therefore, the only issues which you are called upon to determine in either of the three cases about to be submitted to you are the issues heretofore referred to in these instructions, and that which relate wholly and solely to the questions of the monetary compensation to the defendants for such damages as will accrue to them by reason of the taking of the respective properties sought to be condemned, and by reason of the severance of such properties from the remaining property owned by the defendants, and by reason of the cost of constructing the necessary fences which will have to be constructed in connection with the construction of the said proposed road; and in determining these issues you must not consider any part or portion of the evidence that does not bear directly upon them, and particularly you must not consider any part or portion of the evidence with reference to any former user of any roads upon or across the Malibu Ranch by any persons; nor the present or past situation of any of the persons living adjacent to the ranch either to the north or in Ventura county in the so-called Yerba Buena district, or any need or needs of any person or persons whatsoever for a road or roads through any of the property of either of the defendants; all of such evidence having been received in these cases upon questions and issues other than those which you are called upon to determine,

and upon questions and issues with which you, in your determination of the questions and issues to be submitted to you, have nothing whatever to do.

Given. Defendants request.

McCORMICK, J.

"It is your duty to ascertain and assess:

"*First*—The actual market value of the 40 foot strip of the land of each defendant sought to be condemned.

"*Second*—The actual market value of the additional parcels of land of each defendant sought to be condemned.

"*Third*—If any land sought to be condemned is a part of a larger parcel of land owned by the same owner, whether or not that portion of such larger parcel not sought to be taken will be damaged by reason of the severance therefrom of the part sought to be taken, and the construction of the proposed road in the manner proposed by plaintiff and shown by the evidence.

"*Fourth*—The amount of such damage by severance, if any.

"*Fifth*—The value of all improvements pertaining to the realty upon each parcel sought to be condemned.

"These matters you will find separately as to each of the defendants, in each of the three cases on trial.

3835 "You will also find:

"(a)—The number of miles of fencing which it will be necessary to construct on the property of the defendants May K. Rindge and the Rindge Company by reason of the taking and use for highway purposes of the land sought to be condemned in these actions.

"(b)—The kind or kinds of fences which will be suitable.

3836 "(c)—The cost per mile of such fencing.

"These matters, as to fencing, you will find separately as to the defendant May K. Rindge, and the defendant Rindge Company, respectively, in the case involving the main road, and as to the Rindge Company alone, in the cases involving the Los Alisos road and the beach road, respectively.

Given as modified. Plaintiffs request.

McCormick, J.

3837 "In determining the amount of compensation which should be awarded for property taken or damaged, you should not adopt the plan of taking the aggregate of the sums testified to by the various witnesses as to value and dividing such aggregate sums by the number of such witnesses and awarding, by your verdict, the average thus obtained. This method of arriving at a verdict is improper and illegal.

Given. Plaintiff's request.

McCormick, J.

3838 "In estimating and assessing the awards to be made, in the case involving the condemnation of the easement, for the so-called main road through the ranch, the same should be fixed as of the date of this trial, to-wit, September 30, 1918, and the actual market value of the property at that time should be the measure of compensation to be awarded for all property to be actually taken, and the basis of estimating and fixing damages, if any, to property not actually
3839 taken.

"In the case involving the condemnation of the easement for the proposed Los Alisos road, the 24th day of January, 1918, and in the case involving the condemnation of the easement for the proposed beach road, the 9th day of August, 1918, must be taken as the dates upon which the values of the parcels to be actually taken and the damages, if any, to property not actually
3840 taken, are to be determined."

Given as modified. Plaintiff's request.

McCORMICK, J.

"The burden of proof rests upon the various defendants to establish:

"(a) the actual market value of the land sought to be condemned;

"(b) the actual market value of the improvements, if any, which will be taken or damaged;

"(c) whether or not their remaining property not sought to be taken, will be damaged by rea-

son of the severance therefrom of the land sought to be taken;

"(d)—the amount of such severance damages, if any.

Given at plaintiff's request.

McCormick, J."

"The measure of damages which you are to apply in this case, in so far as the land taken is concerned, is the actual value of such land taken; that is to say, its market value which is the highest price estimated in terms of money which the land would bring if exposed for sale in the open market with reasonable time allowed in which to find a purchaser, buying with knowledge of all of the uses and purposes to which said land was adapted and for which it was capable.

"You are not to consider what the land was worth to the defendant, or defendants, the owners, for speculation or merely possible uses, nor what said defendant, or defendants have claimed it was worth to her, or them, nor what it may be worth to the plaintiff in this action for road or other purposes, nor what the land would bring at a forced sale.

"You are not to consider the price the land would sell for under special or extraordinary circumstances, but its fair market value if offered in the market under ordinary circumstances for

3844 cash, a reasonable time being given to make the sale.

"The location of the property, its surroundings, and all other things are to be considered, but you are not to indulge in speculation or conjecture. You must take into consideration the purposes for which the property was adapted and determine the market value from what a person would, at the dates mentioned in the other instructions given herein, have paid for
3845 the property in cash, not buying, however, as I have said, for any particular purpose, but having regard to the market value of the property as it then stood, for all purposes.

Given by the court.

McCormick, J.

"After you have determined the value of the 40 ft. strip and the parcels of land sought to be condemned herein, you must then ascertain and
3846 assess the amount of damages, if any, which accrue to the portion not sought to be condemned by the plaintiff, but which you find will be damaged by reason of severance, as I shall hereinafter define such severance. This damage, if any, will be determined by ascertaining in the same manner as heretofore stated, the market value of those portions of said tract or tracts, not taken, as it was on the respective dates herein mentioned, and by deducting therefrom the market value of said property after the sev-

erance and after the proposed road is constructed. The difference between these values, if there shall be any, will be the amount of damage done by the opening of said road to the part of said land, or lands, not taken.

"The law fixes this method of ascertaining damages in this case and it is your duty to follow it strictly and literally. You must exclude in this estimate, however, any estimate of benefits, if any, derived from building the road to the property not taken.

Given by the court.

McCormick, J.

"Wherever in any of the instructions given to you in either or any of the three cases, on the question of severance, such severance means in the case of each defendant, the taking or dissevering of the property sought to be condemned from the remaining part or portion of the property belonging to such defendant, and the damages, if any, to be awarded for such severance, are those which will accrue to such defendant, if any, by reason of the taking of the property sought to be condemned from the remaining portion of said property and the construction of said proposed road in the manner proposed by the plaintiff.

Given at defendants' request.

McCormick, J.

"If you should find from the evidence that any damages will accrue to the portion of the

land of any defendant, not sought to be condemned, by reason of its severance from the portion of any such defendant's land sought to be condemned, and the construction in such instance of the said proposed road in the manner proposed by the plaintiff, then you are further instructed that such and every such defendant is entitled, as a matter of right, to the full amount of such damage as you may find will so result, and that your duty, if you find that such damage will so result, is to ascertain and fix the amount thereof in each instance.

Given. Defendants' request.

McCormick, J.

"You are instructed that the evidence shows that May K. Rindge, one of the defendants in the so-called main road case, is and at all the times mentioned in the complaint in said main road case, was the owner and entitled to the possession of a portion of the real property known as the Malibu Ranch or Rindge Ranch, through which the proposed road known and designated and referred to throughout the said case as the main road runs, and that the said portion of said property of said defendant May K. Rindge lies between the eastern boundary of said Malibu or Rindge Ranch and the boundary line between the property of said May K. Rindge in said ranch and the property of the Rindge Company in said ranch, just west of Marie Canyon, as

3853 shown upon 'Exhibit A' attached to the complaint in said case, and between the mean high tide of the Pacific ocean on the south, and the northern boundary line of said Malibu or Rindge ranch on the north, and contains about 1947 acres.

Given. Defendants' request.

McCormick, J.

"That the plaintiff seeks in the action known as the main road case to condemn that portion
3854 of said property of the said defendant, May K. Rindge, described in the complaint in said action and shown upon the map, 'Exhibit A,' annexed to the complaint in said action, and placed in evidence herein, as a forty foot strip right of way for highway purposes over and across said land of the defendant May K. Rindge, commencing at Las Flores Canyon at the easterly boundary of said land and the said Malibu
3855 ranch, and running thence in a general westerly direction through the said land of the said May K. Rindge to the westerly boundary of the said land of the said defendant, May K. Rindge, slightly west of Marie Canyon, as shown on said map 'Exhibit A,' which said forty foot strip right of way so sought to be condemned contains about 22.14 acres of land; and that the plaintiff further seeks in said action, the said main road case, to condemn of the said land of the said defendant, May K. Rindge, for high-

3856 way purposes, certain additional parcels of land described in the complaint therein, and shown upon said map, 'Exhibit A,' and numbered respectively parcels 1 to 20A, both inclusive, and consisting of 21 separate parcels of land lying immediately adjoining and on both sides of said forty foot strip of land last described, and containing in the aggregate about 4.86 acres of land.

Given, defendants' request.

McCORMICK, J.

3857 "You are instructed that the evidence shows that the Rindge Company, one of the defendants in each of the above entitled and described actions, is and at all the times mentioned in the complaint in the 'main road' case, was the owner of and entitled to the possession of a portion of the real property known as 'Malibu' or 'Rindge' ranch, through which the proposed road known and designated and referred to in the

3858 complaint in said action, and referred to throughout the said case as the 'main road' runs, and that its said portion of said property lies west of the western boundary line of the property of May K. Rindge in said ranch and between said western boundary of said property of May K. Rindge, and the boundary line between Los Angeles and Ventura counties on the west, and between the mean high tide line of the Pacific ocean on the south and the northern bound-

3859 ary of said Malibu or Rindge ranch on the north, and contains about 11,332 acres.

Defendants' request. Given.

McCormick, J.

"The plaintiff seeks in the action known as the 'main road case,' to condemn that portion of said property of said defendant Rindge Company, described in the complaint in said case and shown upon the map, 'Exhibit A,' annexed to the
3860 complaint in said case and placed in evidence herein, as a forty foot strip right of way for highway purposes, over and across said land of the defendant Rindge Company, commencing at the westerly boundary line of the land of May K. Rindge, which is and constitutes the eastern boundary line of the said land of the Rindge Company, and running thence in a general westerly direction on said land of said Rindge Company to the westerly boundary line of said land
3861 of said defendant Rindge Company, which is the said boundary between the said counties of Los Angeles and Ventura; that said forty foot strip right of way sought to be condemned contains 80.55 acres of land; and that the plaintiff further seeks in the said main road case to condemn of the said land of said Rindge Company, for highway purposes, certain additional parcels of land described in the complaint in said main road case and shown on said map, 'Exhibit A,' and numbered respectively parcels 21 to 176,

both inclusive, and consisting of 156 separate parcels of land, lying immediately adjoining said forty foot strip of land last described, and containing in the aggregate 39.57 acres of land.

Given, defendants' request.

McCormick, J.

"You are instructed that in the main road case the only evidence as to the kind and character of road to be constructed which you are to consider is that furnished by the estimates, profiles and cross sections introduced in evidence here, the same showing a general right of way of 40 feet in width, together with various and sundry off-sets on either side thereof, for the necessary fills and cuts, and other purposes necessary to the construction of said road, and the construction within said right of way of a road to grade 22 feet in width and the entire length of said road to grade 22 feet in width and the entire length of said road to be 21.18 miles, and said road to be intersected with bridges and culverts of the type and character testified to herein, to be placed at the respective points testified to herein, and that under the testimony these bridges and culverts are the only means of passing across said road to the north or the south which are shown by the evidence and which can be considered by you.

Defendants' request.

Given.

McCormick, J.

"In considering and determining in any instance or instances whether or not the portion of the land of any defendant or defendants not sought to be condemned will be damaged by reason of the severance therefrom of the portion of the land of such defendant or defendants sought to be condemned, and the construction in any such instance or instances of said road in the manner proposed by the plaintiff, you are entitled to, in such instance, take into consideration and to consider the nature and character of the proposed improvement, the manner in which it is located upon the land of the particular defendant, the extent, location and character of the lands of such defendant proposed to be taken by the plaintiff for the proposed road or improvement, the uses to which the said land of such defendant have been and are being put, and to which it is best adapted, and all of the facts and circumstances developed by the evidence which in any way bears upon the question of whether or not any such damage to such defendant by reason of such severance would accrue.

Defendants' request.

Given.

McCormick, J.

"You are further instructed that in considering and determining the question as to whether or not any damage would result by reason of

3868 the severance of the portion of the property of any defendant not sought to be condemned, and by reason of the construction in such instance of the improvement in the manner proposed by the plaintiff, you must not enter into any speculative consideration of any prospective, future uses to which such land of such defendant may or might be put, but you are to confine your consideration solely in this regard to the uses to which it has been and is being put, and to which
3869 at the respective times hereinbefore stated it was best adapted.

Defendants' request.

Given.

McCormick, J.

"In considering the question of severance damage, you may consider the increased cost of cultivating the arable lands of such defendant, if any, which would result from said severance,
3870 and the construction of said proposed road, and also the increased cost, if any, of handling the stock upon any of such property, due to the said severance and construction of said proposed road, and also the detriment and damage, if any, to any of said property as a stock ranch, due to the said severance, and to said construction of said proposed road; and, further, in this connection, you may consider the detrimental effect, if any, upon any stock ranging and feeding upon said land, due to the said severance and to

3871 the construction of said proposed road, and also the interference, if any, with the access to water, and pasture, due to said severance and construction of said proposed road in the manner proposed by the plaintiff.

Given as modified.

Defendants' request.

McCormick, J.

"Should you find from the evidence that any
3872 part of the proposed road, if any, will divide pasture land and render it more difficult to get live-stock to and from the customary stock watering places, or to or from different parts of the stock range, and thereby add to the cost of handling live-stock upon the remaining property, then any such added cost, if any, would constitute damages, by way of severance to the remaining property of any such defendant, which it would be your duty to consider in
3873 arriving at your verdicts upon the issues of severance damages.

Defendants' request.

Given as modified.

McCormick, J.

"In considering the question of severance damages, you may consider the damage, if any, done to any private road of such defendant, now upon said ranch, which lies within the right of way and proposed parcels sought to be condemned by the plaintiff; and if you should find

3874 that said severance and said construction of said proposed road in the manner aforesaid does cause a damage to any such defendant by reason of any destruction of said private road or interference with its use, then such damage must be ascertained by you and included in the amount of damages, if any, as you find will result to such defendant or defendants by reason of said severance and said construction of said proposed road.

3875 Defendants' request. Given as modified.

McCormick, J.

"You are further instructed that in determining as to whether or not any damages would result to either of the defendants in either of the cases by reason of the severance as defined in these instructions, and in awarding the damages to such defendant or defendants, if any you may find, are so damaged, you must not be

3876 swayed by any matter of passion or prejudice, but must act with absolute fairness between the parties, and you must award such damages only, if any are awarded, as are fair and reasonable, and as will fairly compensate such defendant or defendants, if any, to whom the same are awarded.

Defendants' request.

Given.

McCormick, J.

"As a general rule, witnesses are permitted to testify merely as to facts, and are not permitted to give their opinions or conclusions. An exception to this rule, however, exists when the subject of inquiry is one which relates to a trade, profession, science or art, in which persons instructed therein by study or experience are presumed generally to have more skill and knowledge than the ordinary person of average intelligence. In such cases witnesses who have been shown to be qualified as experts along the particular line of inquiry, are allowed to give their opinions as an aid to the jury in determining the facts. The jury, however, is not bound by the opinion of any expert witnesses, but must determine the fact for themselves, and it is your province to weigh the testimony of witnesses whose opinions have been given upon the subject of values and damages, by reference to the whole situation of the property and its surroundings and all the surrounding circumstances, and by applying to it your own experience and knowledge. This does not mean that you can act in any case upon particular facts material to its disposition resting in your private knowledge, nor that you are to constitute yourselves witnesses in the case, but you may and should judge of the weight and force of the evidence by your own knowledge of the subject of the in-

3880 quiry. You are not bound to give weight to any testimony which is contrary to what persons of average intelligence know to be true.

"An opinion is entitled to only the weight given to it by the reasons by which it is supported and you are the sole judges of the strength or weakness of the reasons advanced.

Given.

McCormick, J.

3881 "You are instructed that the evidence shows that the Hueneme, Malibu & Southern Railway, a corporation, one of the defendants in the said main case, is the owner of a certain 60 foot right of way for railroad purposes, commencing at the easterly line of said Malibu Ranch and extending thence through said ranch in a westerly direction to the county line between the counties of Los Angeles and Ventura.

Defendants' request.

3882 Given.

McCormick, J.

"That the plaintiff seeks in the action known as the main road case to condemn certain small parcels of the said railroad right of way of the said defendant Hueneme, Malibu & Southern Railway Corporation, both in connection with the proposed forty foot right of way and said proposed road or highway, and as parts of the

3883 parcels lying on either side of said proposed right of way for said highway.

Defendants' request.

Given.

McCORMICK, J.

"That the issues and the only issues which you, the jury, are called upon to determine in the main road case as between the plaintiff and the defendant corporation, Hueneme, Malibu &
3884 Southern Railway, are the following:

"I—The reasonable market value of the portions of the said right of way of said Hueneme, Malibu & Southern Railway sought to be condemned as a part of the said 40 foot right of way which the plaintiff seeks to condemn in said main road case through the entire Malibu Ranch.

"II. The reasonable market value of the additional portions of said right of way of said railway corporation defendant which the plain-
3885 tiff seeks to condemn in connection with the parcels sought to be condemned by the plaintiff on either side of said 40 foot right of way through said ranch for highway purposes.

Defendants' request.

Given.

McCORMICK, J.

"The law of this state provides that every railroad corporation must, within two years after filing its original articles of incorporation, begin the construction of its road, and must

3886 every year thereafter complete and put in full operation at least five miles of its road until the same is fully completed, and upon its failure so to do, for the period of one year, its right to extend its road beyond the point then completed is forfeited. After the completion of any railroad or any part thereof capable of being operated, its owner must operate it and upon his failure to keep it, or any portion thereof, in full operation for the period of six months, his right
3887 to operate it in whole or in part, as the case may be, is forfeited, and the lands occupied for the purposes of the road so far as the same is not operated, revert to the original owners or their successors in interest.

"The law further provides a definition of the term 'Full operation,' viz.: 'A railroad is in full operation when one passenger train or one mixed train is run over it once a day in each
3888 direction, and a sufficient number of freight trains to accommodate the traffic on the road.'

"I further instruct you that if you find that either one of the defendant railroad corporations has failed to begin the construction of its road within two years after filing its original articles of incorporation, and thereafter to complete each year and put in full operation, as I have defined that term to you, at least five miles of its road, and if this failure has existed for a period of one year, the right of such railroad company to

3889 extend its road beyond the point then completed is forfeited.

Plaintiff's request.

Given.

McCormick, J.

"In reference to the matter of fencing, in answering the special interrogatories submitted to you concerning said matter, you will bear in mind the concession of the plaintiff in this case
3890 as stated by its counsel in open court as follows: 'We concede that it will be necessary to fence, I won't say every foot, because there might be places where the road goes so near the shore that a fence on one side would keep the cattle out, but along a good portion of the road it will be necessary to fence probably both sides of the road, and at others, one side, if necessary, lying parallel with the road for the purpose of keeping the cattle out of the field and out of the
3891 road.'

Given by the court.

McCormick, J.

"The only question, therefore, in so far as the necessity for the construction of fences is concerned, which is left open for your determination, is whether or not the fencing will be necessary for the entire roadway, and, if not, then for what portions, and how many miles of

3892 said roadway, and the kind of fence best suited to properly and reasonably fence the land.

Defendants' request.

Given as modified.

McCormick, J.

"You are further instructed that in consid-
ing the question as to the extent to which it is necessary to fence the ranch and whether a fence in whole or in part along the said proposed
3893 roads is necessary, and whether, if in part only, what parts it is necessary to fence, you must take into consideration the nature and character of the use to which the property is being put, and the nature and character of the property itself, and the nature and character of the rights of way of the said proposed roads.

Defendants' request.

Given.

McCormick, J.

3894 "A special form of verdict in each of the three cases has been prepared and will be handed to you. You are instructed that when nine of your number have agreed upon the verdict in any case, you will cause it to be signed by your foreman and returned into court. It is not necessary that the same nine shall agree in the case of all the parcels of land sought to be condemned. It is sufficient if any nine agree as to the award that should be made for the taking of a particular parcel; a different nine may agree as to the

award that should be made for the taking of some other parcel. It is, however, necessary that the same nine should agree in arriving at the amount of damages, if any, to the land of any defendant not sought to be taken, as have agreed as to the award to be made to such defendant for the land taken. The same nine must agree in fixing severance damages if you find any that have agreed in fixing damages on the parcels of land.

Plaintiff's request.

Given.

McCormick, J.

"Nothing that I have said in any instruction which I have given you is to be regarded by you as in any way indicating any belief or opinion on the part of the court as to the existence or non-existence of any fact or circumstance in this case except wherein the court states stipulations and concessions of facts. It is the province of the court to instruct you as to the law, but you are the sole judge of the facts.

Given as modified.

McCormick, J.

"There are three forms of verdict and I shall read them to you as follows:

"Verdicts read.)

"In interrogatory No. 12 on page three of the special issues submitted in the so-called main road case, you are to consider in answering said

3898 interrogatory the concession which I have heretofore stated in the instructions given.

"Gentlemen of the jury, wherever you find the spaces which are to be filled in by pen and ink by one of your number whom you will select as foreman, in some instances you will find that some of the spaces,—for instance the one pertaining to the kind of fence which may be best suited for the purpose, you will find that the space in the answer may not be sufficiently long.
3899 Do not hesitate to state the answers in full and explicitly and with definiteness and certainty so that we may know just what you find on the interrogatories."

To the giving of each and all and every of said instructions and to the whole thereof, save and except those only which are noted as having been given at the request of the defendants, the defendants and each of them in each of these
3900 cases, to-wit: the main road case and the Alisos Canyon case, then and there duly excepted.

Exception No. 71.

That the following instructions requested by the defendants were refused by the court and not given:

VII.

That the issues and only issues which you, the jury, are called upon to determine as between the plaintiff and defendant, May K. Rindge, are

3901 the following issues in the main road case, to-wit:

1—The reasonable market value of the forty foot strip of land of said defendant, May K. Rindge, sought to be condemned by the plaintiff in said main road case, and all improvements thereon pertaining to the realty.

2—The reasonable market value of the additional parcels of land of the defendant, May K.
3902 Rindge, sought to be condemned by the plaintiff in said main road case, and all improvements thereon pertaining to the realty.

3—Whether or not any damage will accrue to the remainder of the property of the defendant, May K. Rindge, in said Malibu Ranch, which is not sought to be condemned by reason of the severing of said remaining property from the portions of said ranch belonging to said May K. Rindge sought to be condemned, to-wit: the said
3903 forty foot strip and said parcels of land belonging to said May K. Rindge, and in these instructions more specifically described and referred to, and by reason of the construction of the contemplated improvements, that is to say, the said proposed road in the manner proposed by the plaintiff; and in the event that you should find from the evidence that the portion of the said ranch belonging to said May K. Rindge not sought to be condemned in said main road case, will be damaged by reason of its severance from

3904 the portion sought to be condemned, then it will be your duty to find and assess, separately, the total amount of such damage caused by such severance.

4—How many miles of fence will be necessary in connection with the construction by the plaintiff of said proposed road, through the lands of the defendant, May K. Rindge, in the manner proposed by the plaintiff.

3905 5—The reasonable cost of constructing such fencing, together with the offsets.

Refused. In inst. of plaintiffs—requested.

McCormick, J.

X.

You are instructed that the Rindge Company is the sole defendant in the so-called "Alisos Canyon Road Case," and that it is and at all the times mentioned in the complaint in said Alisos Canyon road case, was the owner of and entitled

3906 to the possession of that certain real property known as the Malibu or Rindge Ranch, through a portion of which the proposed road known and designated and referred to throughout the said case known as the Alisos Canyon road runs, and that the real property of said Rindge Company is the portion of the Malibu or Rindge Ranch already described to you in these instructions.

"Deft.'s request—refused. See inst. I of defts. Requested.

McCormick, J."

3907

XI.

That the plaintiff seeks in the action known as the Los Alisos Canyon road case to condemn for highway purposes a portion of the said property of said defendant Rindge Company described in the complaint in said action, and in these instructions described as the part of said Malibu or Rindge Ranch belonging to the defendant Rindge Company, which said property
3908 sought to be condemned for highway purposes in said Los Alisos Canyon road case consists of a forty foot strip of land commencing at the northern boundary line of said Rindge or Malibu Ranch, and extending southerly down to said Alisos Canyon to a point near the northerly boundary line of said main road just before it reaches the said Alisos Canyon, and then in a southeasterly direction to a point of intersection with said main road just west of La Chusa Can-
3909 yon, as shown upon the map, "Exhibit A," on file in these actions; and also two certain parcels of land lying on either side of the forty foot right of way, which said forty foot strip and said parcels are fully described in the complaint in said Alisos road case, and are shown by the map annexed to the complaint in said Alisos road case as "Exhibit A," which said map has offered and received in evidence in said Alisos road case.

3910 "Deft.'s request—refused. Covered by instructions given—repetition.

McCORMICK, J."

XII.

You are instructed that the evidence shows that the Rindge Company, one of the defendants in the so-called "Beach Road Case," is and at all the times mentioned in said beach road case was the owner of and entitled to the possession of a portion of the real property known as the Mal-
3911 ibu or Rindge Ranch, through a portion of which the proposed road known and designated and referred to throughout the trial as the "Beach Road" runs, and that the said property of the Rindge Company in said Malibu or Rindge Ranch is the said property of the Rindge Company already described in reference to its property in the main road case.

"Deft.'s request—refused. Repetition. See I.

3912 McCORMICK, J."

XIV.

That the issues and the only issues which you, the jury, are called upon to determine in each of the three cases, as between the plaintiff and the said defendant, Rindge Company, are the following:

1—The reasonable market value of the 40 foot strip of land sought to be condemned in each case and all improvements thereon pertaining to the realty.

3913 2—The reasonable market value of the additional parcels of said defendant's lands sought to be condemned in each case, by the plaintiff, and all improvements thereon pertaining to the realty.

3—Whether or not in each case any damages will accrue to the remainder of the property of the Rindge Company in said Malibu Ranch which is sought to be condemned, by reason of
3914 the severance of said remaining property from the portions of said ranch sought to be condemned, to-wit: the said 40 foot strip in each case, and the said parcels of land in each case, and by reason of the construction in each case of the improvement, that is to say, the said proposed road in the manner proposed by the plaintiff, respectively, in each case; and in the event that you should find that said portion of said ranch belonging to the defendant, Rindge Com-
3915 pany, not sought to be condemned in each or either or any of the cases, will be damaged by reason of its severance from the portion sought to be condemned, and by the construction of said improvement in the manner proposed by the plaintiff, then it will be your duty to find and assess, separately, the total amount of damages caused by such severance in such case or cases, if any, as you may so find.

4—How many miles of fencing in each case will be necessary in connection with the con-

3916 struction by the plaintiff of the proposed road in each case, in the manner proposed by the plaintiff.

5—The reasonable cost in each case of constructing such necessary fencing, together with the offsets.

Deft.'s request—refused. Repetition.

McCormick, J.

XVII.

3917 You are instructed that the evidence shows that the Hueneme, Malibu and Southern Railroad Company, one of the defendants in the beach road case, is the owner of and is entitled to a sixty foot right of way for railroad purposes, commencing at the eastern boundary line of the Malibu or Rindge Ranch, and running thence westerly through said Malibu or Rindge Ranch to the county line between Ventura and Los Angeles counties, and that the said right of
3918 way is intersected and crossed by the said proposed beach road.

Defendant's offer—refused.

McCormick, J.

XIX.

You are instructed that the evidence shows that in the beach road case the defendant, Hueneme, Malibu and Port Los Angeles Railway Company, a corporation, is the owner of and entitled to the possession of a certain railroad right of way 200 feet in width and extending

3919 along the line of the mean high tide from the eastern boundary of said Malibu or Rindge Ranch westerly through said ranch to the said boundary line between the counties of Los Angeles and Ventura, and that said 200 foot right of way of said last mentioned defendant corporation is intersected by the said beach road.

"Deft.'s request—refused. See deft.'s request for general instructions.

3920 McCORMICK, J."

XX.

You are instructed that each of the defendants is, as a matter of right, entitled to the reasonable market value of all of the property belonging to such defendant which is sought to be condemned by the plaintiff in this action, and that the only question in that regard for you to determine in each instance is what that reasonable market value is.

3921 "Deft.'s request—refused. Repetition.

McCORMICK, J."

XXIII.

You are further instructed that if you should find from the evidence that any damages will accrue to the portion of the land of either or any of the defendants not sought to be condemned, by reason of its severance in any instance or instances, from the portions sought to be condemned and the construction of the said proposed road, in any instance or instances, in

3922 the manner proposed by the plaintiff, then you are further instructed that such defendant is or such defendants are, entitled, as a matter of right, to the full amount of such damage as you may find in any instance or instances, will so result, and that your duty, if you find that such damage will so result, is to ascertain and fix the amount thereof as to such defendant or defendants, respectively.

"Deft.'s request—refused. Repetition.

3923 McCormick, J."

XXVII.

You are instructed that in considering and determining whether any damage by reason of the severance, as defined in these instructions, will result to the remaining property of either or any of the defendants, you may consider in each instance the amount and location of the land to be taken, the inconvenience, if any, to

3924 the owner in cultivating the remaining land, or in using it for stock-raising purposes, or for any of the purposes for which it is being used, and to which it is adapted, and the inconvenience, if any, to the owner of getting to and from different parts of his remaining property and in getting his stock and farming implements and other things necessary to the use, management and operation of his remaining.

Refused—repetition and also containing improper elements.

McCormick, J.

3925 XXVII.

You are instructed that in considering and determining whether any damage by reason of the severance, as defined in these instructions, will result to the remaining property of either or any of the defendants, you may consider in each instance the amount and location of the land to be taken, the inconvenience, if any, to the owner in cultivating the remaining land, or
3926 in using it for stock-raising purposes, or for any of the purposes for which it is being used, and to which it is adapted, and the inconvenience, if any, to the owner or getting to and from different parts of his remaining property and in getting his stock and farming implements and other things necessary to the use, management and operation of his remaining property, to and from its different parts.

"Refused—repetition and also containing im-
3927 proper elements.

McCORMICK, J."

XXIX.

Wherever any part of either of the proposed roads crosses a parcel of cultivated land, you may consider as an element of damage the inconvenience, if any, to the owner in farming the remaining portions which will be caused by its being thus divided, and the damages, if any, thus resulting, or damages due to severance.

"Deft.'s request. Refused—repetition.

McCORMICK, J."

3928 XXX.

If the effect of the construction of a public road through private property is to make it more inconvenient and expensive for the owner to cultivate and manage and operate the remaining land, that is a proper element for the consideration of the jury in determining whether or not damage by reason of the severance would result, and in ascertaining and fixing the amount of
3929 such damages.

"Deft.'s request refused—repetition and containing improper elements.

McCormick, J."

XXXIII.

You are further instructed that in weighing the evidence and in determining the issues which will be submitted to you for your determination, you may exercise your own individual judgments as to any of such matters, if any, which have
3930 come within your general knowledge acquired by you through observation and experience.

(Note—See authorities cited in department opinion of Mr. Justice McFarland in *Beveridge v. Lewis*, 137 Cal. 628.)

Defendant's offer—refused.

McCormick, J.

XXXIV.

You are instructed that in considering and determining the issues which will be submitted to you for your consideration and determination,

3931 you must not be swayed in any way by passion or prejudice, but that it is your duty to award to the defendants in each given instance a fair compensation for the property sought to be taken by the plaintiff from such defendant, as the case may be, both for the forty foot strip right of way in each case and for the separate parcels of such defendant, sought to be condemned in each case, and that such fair amount
3932 of damages is the reasonable market value of the property sought to be taken; and in this connection you are instructed that the reasonable market value of the property sought to be taken in the main case is its present reasonable market value, to-wit: at the time of the trial; that the reasonable market value of the property sought to be taken in the action known as the Alisos Canyon road case, is its reasonable market value at the date of the commencement of that action,
3933 to-wit: on January , 1918; and that the reasonable market value of the property sought to be taken for road purposes in the "Beach Road Case" is its reasonable market value as of the date of the commencement of that action, to-wit: on the 9th day of August, 1918.

Refused—repetition.

McCORMICK, J.

To the refusal of the court to give such requested instructions, and to its failure to give the same, and to each refusal of the court to

3934 give each of the same, and to each failure to give each of the same, the defendants in each of said cases then and there duly excepted.

Exception No. 72.

A special verdict in each of these cases (in the form thereafter rendered and hereinafter set forth) was agreed upon by all parties; and both of these cases were thereupon, to-wit: on December 18, 1918, submitted to the jury for its verdicts as in said special forms of verdict indi-
3935 cated.

That by stipulation of the parties and as an aid to the jury in arriving at their verdicts, the following calculations and summaries purporting to show respectively what the counsel who prepared them claimed respectively to be the result of the evidence on the subjects to which they relate, but not as being any evidence in or of themselves of any of the matters to which they
3936 pertain were submitted to the jury; and the jury was fully instructed as to the purpose for which they were prepared and submitted to it, and cautioned to limit their consideration of them to that purpose alone. And that none of the parties hereto made any objection to said submission, but on the contrary requested and consented thereto.

3937 PREPARED BY MR. ANDERSON, ONE OF THE ATTORNEYS FOR THE DEFENDANTS.

DAMAGE SUMMARY

A.

May K. Rindge Portion

I.

Right of Way Strip

	Camfield		$ 3,112.76
	Culver		3,862.78
	Gardner		2,267.37
3938	Butterworth:	$2,254.82	
	Improvements	153.00	2,407.82
	Allen:	2,417.00	
	Improvements	153.00	2,570.00
	Crippen:	2,417.37	
	Improvements:	261.00	2,678.37

II.

Parcels

	Camfield	387.24
3939	Culver	97.24
		207.81
	Gardner	228.57
	Butterworth	228.57
	Crippen	228.57

B.

Rindge Company Portion

I.

Right of Way Strip

Camfield	$ 5,807.60
Culver	5,807.60

3940	Gardner		6,438.91
	Butterworth	$6,438.91	
	Improvements	1,234.50	7,673.41
	Allen	6,456.19	
	Improvements	633.25	7,089.44
	Note—Seems to have omitted iron pipe.)		
	Crippen	6,438.91	
3941	Improvements	1,393.00	7,831.91

II.

Parcels

Camfield and Culver.....	794.40
Gardner, Butterworth, Allen, Crippen	1,278.77

C.

Alisos Canyon

I.

3942 Right of Way

Camfield .....$	184.00
Culver	184.00
Gardner, *et al*.....	121.48

II.

Parcels

Camfield and Culver.....	220.00
Gardner	151.22
Butterworth *et al*.....	151.22

3943

C.

Alisos Canyon

I.

Right of Way

Camfield		$ 184.00
Culver		184.00
Gardner *et al*		121.48

II.

Parcels

3944

Camfield and Culver		220.00
Gardner		151.22
Buterworth *et al*		151.22

D.

Land taken of Malibu, Hueneme and Southern Ry. Co.

I.

In Right of Way

Culver and Camfield		59.06
Gardner		131.23
Butterworth:	$138.92	
Improvement	15.00	153.92
Allen:	131.23	
Improvement	15.00	146.23

3945

II.

In Parcels

Gardner, Allen, Crippen	7.69

3946 FENCING

I.

May K. Rindge Portion

A.

Cost of Offsets or Angles

Note—This is compiled from actual count on the map of the number of different sized offsets, and the figures as to cost of each side given by Otis, Vol. III, pp. 241, *et seq.*

	10 of five feet	at	$ 9.91	$ 99.91
3947	14 of 10	"	" 10.16	142.14
	10 of 15	"	" 11.12	111.20
	7 of 20	"	" 12.37	86.59
	3 of 25	"	" 14.14	42.42
	5 of 30	"	" 14.50	72.50
	1 of 40	"	" 16.28	16.28
	1 of 45	"	" 18.56	18.56
	Total			$589.60

B.

3948 Hog Tight (Vol. III, 135)

Road, 4.57 miles

Both sides, 9.17 miles

9.17 miles (straightaway) at $867.58	$ 7,955.70
Offsets as above	589.60

C.

Five Barbed (Vol. III, p. 196)

9.17 miles at $1,071.65	9,827.20
Offsets	589.60
Total	$10,416.80

3949

D.

Four Barbed (Vol. IV, p. 440)

9.17 miles at $960.38 ..... $ 8,706.68
— " 589.90

II.

Rindge Company

Main Road
Length .....16.61 miles
Total, both sides 33.22 "
3950 Straightaway... 3.10 " doubled, 6.20 miles
Rough ground..11. " " 22. "
Very rough .....2.5 " " 5. "
(Vol. III, pp. 184, 185, 188)

A.

Hog Tight

Straight going,	6.20 miles	at	$867.58	$ 5,378.96
Rough,	22 "	"	1056.07	23,232.44
Very rough	5 "	"	1352.85	6,764.25

3951 Total..... 35,375.65

Offsets 4,509.09

Total $39,885.74

B.

Five Barbed

33.22 miles at $1,071.65 $35,700.21
Offsets 4,509.09

Total $40,209.09

3952 C.

Four Barbed (IV, p. 442)

33.22 miles at	31,903.82
Offsets	4,509.09
Total	$36,412.91

III.

Alisos Canyon

Length....1.9 miles; doubled 3.8

Hog Tight

3953 Very rough 3.8 at $1352.85	$ 5,110.72
Offsets (Vol. III, p. 193)	317.46
Total	$ 5,428.19

Five Barbed

3.8 at $1,071.65	4,072.27
Offsets	317.46
Total	$ 4,389.73

Four Barbed

3.8 miles at 960.38	3,649.41
3954 Offsets	317.46
Total	$ 3,966.87

SEVERANCE SUMMARY

I.

May K. Rindge Portion

George Riley

Affect market value 25%

R. B. Strathearn

Severance damage, 20%.....Beef production 50%

Value $174,750....20%.....$34,955.00

3955 Ed. C. Canet
Depreciation.....20%.....$5.00 an acre
William McGuire
Value $20.00 an acre.
Depreciation 20%....$4.00 an acre
Perry A. Howard
Value $40.00 an acre
Depreciation—damage—10%, or $4.00 an acre.
Alexander Culver
Value, $180,900.
3956 Damage 15% $28,016.
T. M. Camfield
Value, $161,200.
Damage, 23,128

II.

Rindge Company Portion

George Riley
Affect market value 25%
R. B. Strathearn
Severance damage 20%—Beef production
3957 50%
Value, $408,395.....20%....$81,467.
Ed. C. Canet
Value, $18. to $20. acre—
Damage 20%—$5. an acre.
William McGuire
Value, $20. an acre
Depreciation 20% or $4.00 an acre.
Perry A. Howard
Value, $40. an acre
Damage 10% or $4.00 an acre.

3958 Alexander Culver
Value, $453,860.
Damage, 15%....$ 62,642.70
T. M. Camfield
Value, 453,860.
Damage, 62,627.

III.

Alisos Canyon Road

Perry A. Howard
If main Road built, 25 c. acre to ranch,
3959 $2,783.00
If Main Road does not go through, $1. an acre, $11,333.
Alexander Culver
1%of Ranch value.
1%of $453,860....$4538.60
T. M. Camfield
$3545.

TOTAL VALUATION SUMMARY

I.

3960 May K. Rindge Portion

R. B. Strathearn.....$174,750.00
Ed. C. Canet
$18. to $20. an acre.
William McGuire $20. an acre
Perry A. Howard $40. an acre
Culver 180,900.00
Camfield 161,200.00
Gardner 89,950.00
Butterworth 182,000.00
Allen 182,000.00
Crippen 108,380.00

3961 II.

Rindge Company Portion

Strathearn 408,395.00
Canet
$18. to $20. an acre.
William McGuire $20.00 an acre
Perry A. Howard..... 453,320.00
Culver 453,860.00
Camfield
(Assessed total ranch, $416,580.)
Gardner 451,000.00
3962 Butterworth 413,475.00
Allen 415,000.00
Crippen 413,420.00

DISTANCES

(Carefully Measured and Verified on Exhibit A)

	Feet.
Los Flores to Carbon.....	3295
Carbon to Sweetwater.....	7600
	11525
3963 Sweetwater to Gate.....	85
	11610
Gate to Hill Curve.....	1925
	13535
Curve to E. of Malibu Creek.....	950
	14485
Creek Crossing.....	900
	15385

3964	Creek to Winter (Malibu Flat).....	3775
		19160
	Winter to West Line.....	4675
	Total May K. Rindge.....	23835
	Rindge Company	
	East Line to Puerco.....	2050
	Puerco to Flat Rock.....	3825
		5875
3965	Flat Rock to Corral.....	3750
		9625
	Corral to Sosto.....	3600
		13225
	Sosto to Latigo (Mountain).....	6450
		19675
	Latigo to Escondido First Crossing (Mountain)	2725
		22400
3966	Escondido to Fenced Marsh.....	3725
		26125
	Forward	26125
	Marsh to Ramirez.....	5250
		31375
	Ramirez to Walnut.....	4475
		35850
	Paralleling Walnut.....	1025
		36875

3967	Walnut to Zuma Crossing.....	6225
		43100
	Zuma Crossing to Beach.....	5450
		48550
	Up Beach to Trancas.....	3575
		52125
	Across Trancas to Beach.....	2900
		55025
3968	Beach to Steep Hill.....	4600
		59625
	Steep Hill to Encinal.....	3950
		63575
	Encinal to Bridge.....	6075
		69750
	Bridge to Lachusa.....	1300
		71150
3969	Lachusa to Alisos.....	1000
		72150
	Alisos to Nicholas.....	5050
		77200
	Nicholas to Willow.....	4675
		81875
	Willow to Sequit Crossing.....	2300
		84175

3970 Sequit to County Line..... 3750

Total Rindge Company..... 87925
Total May K. Rindge..... 23835

Grand Total.....111760

BEACH SUMMARY

May K. Rindge
Las Flores to Curve on Hill E. side of Malibu.....13,535 feet
Miles 2.57

3971 Rindge Company
Between Zuma and Trancas.. 3,575 feet
Between Trancas and Steep Hill ..... 4,600 "
Between Sequit and County Line ..... 1,800 "

Total ..... 9,975 "
Miles ..... 1.9 "
M. K. R..... 2.57miles
3972 R. Co..... 1.90 "

Total ..... 4.47 "

WATER—CANYONS—CATTLE PASSES (BRIDGES, CULVERTS)

DISTANCES

VALUATIONS—DAMAGES

May K. Rindge Portion
Total acreage.....1947
North of Road.....1875
South of Road..... 136
In Road..... 27

3973 Length of Road—4.57 miles; doubled, 9.14 miles

Boundaries

E. Los Flores Canyon
W. Line just W. of Marie
S. Pacific Ocean
N. Malibu boundary line

Canyons

Carbon (Coal)
Sweetwater
Malibu (Creek)
3974 Winter
Marie

Other Landmarks

Warehouse
Wharf
Cattle Corral

Bridges

At Carbon
At Malibu Creek

Water Supply

Carbon.....Some distance N. of
3975 Road
Sweetwater..At or just N. of Road, 2067.
Malibu Creek Crosses about where Creek widens into lake—N. and S. all seasons 2038
Marie.....Dry S. of road in Summer. None now N. of road for half a mile up.....2067, 2625-6

3976 Distances

Los Flores to Malibu Creek, about 15,000 feet W. Line

May K. Rindge to Malibu Creek, nearly 9,000 feet.

(M. K. R. Portion Contd.)

Damages

Right of Way

Camfield		$ 3,112.76
Culver		3,862.78
Gardner		2,267.37
3977 Butterworth	$2,254.82	
Impts.	153.00	2,407.82
Allen	2,417.00	
Impts.	153.00	2,570.00
Crippen	2,417.37	
Impts.	261.00	2,678.37

Parcels

Camfield	387.24
Culver	97.24
Gardner	204.81
Butterworth, Allen, Crippen	228.57

3978 Severance

George Riley	25%	
Strathearn	20%	34,955.00
Canet	20%	
"	$5. an acre	
Howard, 10% on valuation of $40.00 an acre		
Culver	15% $28,016.00	
Camfield	15% 23,128.00	
McGuire, 20%	$. an acre	
Gardner		
Allen		

3979 Butterworth
Crippen
Lewis
Russell
Fuller ..... None

Valuations

Strathearn $174,750.00
Canet $18. to $20. an acre
McGuire 20. " "
Howard 40. " "
Culver 180,900.00
3980 Camfield 161,200.00
Gardner (Items, $92,535.) 89,950.00
Butterworth 182,000.00
Allen 182,000.00
Crippen 108,380.00

Rindge Company Portion

Acreage

Total ..... 11,33 acres
North of Road 9,145.00
South of Road 2,067.88
In Road 120.12

3981 Length of Road 16.61 miles; doubled 33.22 miles

Boundaries

E. by W. line M. K. Rindge
W. by Ventura County line
S. by Pacific Ocean
N. by Malibu Boundary line

Canyons (and distances apart)

Puerco....2050 ft. from E. line
Flat Rock....3825 ft. from Puerco
Corral....3750 ft. from Flat Rock
Sosto....3600 ft. from Corral

3982 Latigo....6450 ft. from Sosto
Escondido....2725 ft. from Latigo
Fenced Marsh (not can,)....3725 ft. from Escondido
Ramirez....5250 ft. from Fenced Marsh
Escondido to Ramirez....8975 ft.
Walnut....4475 ft. from Ramirez
Zuma (Crossing) including 1025 feet paralleling Walnut on West Bank, 7350 ft. from Walnut
Total Ramirez to Zuma Crossing....11825 ft.

3983 Beach....5450 ft. from Zuma Crossing
Up Beach to Trancas....3575 ft. from Beach Point
Across Trancas to Beach....1900 ft. from E. side Trancas
Zuma Crossing to Trancas Crossing....9925 ft.
Beach to Steep Hill....4600 ft. from W. Side Trancas
Encinal....3950 ft. from Steep Hill
Encinal....9550 ft. from Trancas Crossing

3984 Bridge....6075 ft. from Encinal
Lachusa....1500 ft. from Bridge
Alisos....1000 ft. from Lachusa
Nicholas....5050 ft. from Alisos
Willow....4675 ft. from Nicholas
Sequit Crossing....2300 ft. from Willow
County Line....3750 ft. from Sequit Crossing
Willow to County Line....6050 ft.

Bridges—Cattle Ways:
None at Puerco or Flat Rock Corral

3985 Solstice
Latigo (Cattle Culvert)
Escondido
Ramirez
None at Walnut
(R. Co. Portion—Contd.)
Bridges (Condt.)
Zuma (Cont.)
Trancas.
None at Steep Hill
Encinal
3986 Bridge
Lachusa (Present Bridge)
Los Alisos
Nicholas
None at Willow
Sequit
Distances Between Bridges
East Line to Corral..... 9625 ft.
(Note— Distance from Corral East to Malibu Creek more than 18,000 feet.)
3987 Corral to Solstice..... 3600 ft.
Solstice to Latigo..... 6450 ft.
Latigo to Escondido..... 2725 ft.
(Note)— Solstice to Escondido 9,75 feet.)
Escondido to Ramirez..... 8975 ft.
Ramirez to Zuma Creek....11825 ft.
Zuma to Trancas..... 9925 ft.
Trancas to Encinal..... 9550 ft.
Encinal to Bridge..... 6075 ft.
Bridge to Lachusa..... 1500 ft.

3988

Lachusa to Alisos.....	1000	ft.
Alisos to Nicholas.....	5050	ft.
Nicholas to Willow (No Bridge	4675	ft.
Willow to Sequit.....	2300	ft.
Sequit to County Line.....	3750	ft.

(Note— Willow to County line 6050.
Note—Nicholas to County Line 10,725 feet.)

Beach Stretches

Between Zuma and Trancas	3575	feet
" Tranca and Steep Hill	4600	"
" Sequit and County Line	1800	"
Total	9975	"

Miles, 1.9

3989

Prepared by Mr. Vallee, one of the attorneys for plaintiff.

FENCING

Offsets or Angles Main Road

3990

May K. Rindge Portion

10 of 5 ft.....	50 ft.
14 of 10 ft.....140	"
10 of 15 ft.....150	"
7 of 20 ft.....140	"
3 of 25 ft..... 75	"
5 of 30 ft.....150	"
1 of 40 ft..... 40	"
1 of 45 ft..... 45	"

Total number of feet....790 ft. at 500 a mile—approximately $85.00

3991 FENCING

Offsets or Angles Main Road

Rindge Company Portion

106 of 5 ft..... 530 ft.
87 of 10 ft..... 870 "
39 of 15 ft..... 585 "
41 of 20 ft..... 820 "
25 of 25 ft..... 625 "
44 of 30 ft.....1320 "
10 of 35 ft..... 350 "
3992 5 of 40 ft..... 200 "
6 of 45 ft..... 270 "
8 of 50 ft..... 400 "
3 of 55 ft..... 165 "
1 of 60 ft..... 60 "
1 of 65 ft..... 65 "
2 of 75 ft..... 150 "

Total number of feet...6410 " or approximately 1-1/5 mi., at $500 a mi.—$600.00

3993 FENCING

Offsets or Angles Los Alisos Canyon Road

Rindge Company

1 of 5 ft..... 5 ft.
18 of 10 ft.....180 "
1 of 15 ft..... 15 "
8 of 20 ft.....160 "
1 of 25 ft..... 25 "

Total No. of ft.....385 ft. at $500 a mi., approximately $40.00

Prepared by Mr. Vallee, one of the attorneys for the plaintiff:

FENCES—MRS. RINDGE

Gate to Malibu

Fence, North side.....14,485 ft.
None, South side, along beach.....

Malibu to Winter

Fence, North side..... 4,675 ft.
Fence, South side

Winter to Marie

Fence, North side..... 4,675 ft.
None, South side, Bluff on South side.
Total fencing both sides in.....28,510 ft.
May K. Rindge's less offsets..... or
5.04 mi. at $500
$2520.

RINDGE COMPANY

Marie to Sosto

Fence, North side.....13,225 ft.
Fence South side

Sosto to West of Zuma

Hog tight at Zuma

Fence, North side.....35,325 ft.
Fence, South side

West of Zuma to Trancas

Hog tight at LaChusa

Fence, North side..... 3,575 ft.
Fence, South side

At Trancas

Both sides..... 2,900 ft.

West of Trancas to Steep Hill

Fence, North side..... 4,600 ft.
None, South side

3997 Steep Hill to West of Sequit

Fence, North side.....24,550 ft.
Fence, South side

Sequit to Ventura Line

Fence, North side..... 3,750 ft.
None, South side
Total fencing on both sides in Rindge Co. less offsets 163,925 ft. or 31.05 miles at $500 $15,525.
Total fencing on Los Alisos less offsets 3.8 miles
3998 Total fencing in Main case less offsets 36.09 "
at $500 $18,045.
Total fencing in Los Alisos case less offsets at $500 $1,900 3.8 "

That thereafter, on said 18th day of December, 1918, the jury returned into court and rendered its respective verdicts, duly signed by its foreman, in each of these cases, as follows:

3999 In the main road case, No. B-43572:

(Title of Court and Cause.)

1—What at the date of the trial, September 30, 1918, was the actual market value of the land sought to be taken from defendant May K. Rindge?

Answer. (Forty foot strip $2324.70
(
(Additional parcels 228.57
Total $2553.27

4000 2—What, at said date, was the actual market value of the improvements pertaining to the realty on the land sought to be taken from defendant May K. Rindge?

Answer. $153.00

3—Will the remaining portion of defendant May K. Rindge's land, not sought to be taken, be damaged by reason of the severance therefrom of the part which is sought to be taken?

Answer. Yes.

4001 4—If your answer to the last interrogatory was in the affirmative, what do you find the amount of such severance damage to be?

Answer $1162.35

5—How many miles of fencing will it be necessary to construct on the property of defendant May K. Rindge by reason of the taking and use for public highway purposes of the land sought to be taken from defendant May K. Rindge?

4002 This question must be answered in the light of the concession of the plaintiff as to the necessity of a fence which I have quoted in the instructions given.

Answer. Six and 6/10 miles.

6—What kind of fencing will be suitable to be constructed on the land of defendant May K. Rindge by reason of such taking and use of her land sought to be taken?

Answer. Thirty six inch woven wire with two barbed wires above with suitable posts.

4003 7—What will be the cost of such fencing on the land of defendant May K. Rindge?

Answer $550.00 per mile, or total $3,630.00

8—What, at the date of the trial, September 30, 1918, was the actual market value of the land sought to be taken from defendant Rindge Co.?

Answer (Forty foot strip $6,456.10
(
(Additional parcels 1,278.77
4004 Total $7,734.87

9—What, at said date, was the actual market value of the improvements pertaining to the realty of the land sought to be taken from defendant Rindge Company?

Answer $1,234.50

10—Will the remaining portion of defendant Rindge Company's land, not sought to be taken, be damaged by reason of the severance there-
4005 from of the part which is sought to be taken?

Answer Yes.

11—If your answer to the last interrogatory was in the affirmative, what do you find the amount of such severance damage to be?

Answer $2,696.00

12—How many miles of fencing will it be necessary to construct on the property of defendant Rindge Company by reason of the taking and use for public highway purposes of the

4006 land sought to be taken from defendant Rindge Company?

Answer—29 miles.

13—What kind of fencing will be suitable to be constructed on the land of defendant Rindge Co. by reason of such taking and use of its land sought to be taken?

Answer—36 inch woven wire with two barbed wires above with suitable posts.

4007 14—What will be the cost of such fencing on the land of defendant Rindge Company?

Answer $650.00 per mile $18,850.00

15—What, at the date of the trial, September 30, 1918, was the actual market value of the land sought to be taken from defendant Hueneme, Malibu and Southern Railroad Co.?

Answer (Forty foot strip $59.06
(
(Additional parcels 7.69
Total $66.75

4008 16—What, at said date, was the actual market value of the improvements pertaining to the realty on the land sought to be taken from defendant Hueneme, Malibu and Southern Railroad Company?

Answer $00.00

17—What, at said date, was the actual market value of the land sought to be taken from the defendant, Hueneme, Malibu and Port Los Angeles Railroad Company?

Answer $00.00

4009 To the said verdict thus rendered (except as to the form of the same), and to each and every part thereof, and to each and every finding of the jury therein, the defendants in the said main road case, No. B-43,572, then and there duly excepted.

Exception No. 73.

In the Alisos Canyon case, No. B-59,443:

(Title of Court and Cause.)

4010 1—What, on the 24th day of January, 1918, was the actual market value of the land sought to be taken from defendant Rindge Company?

Answer (Forty foot strip $184.00
(
(Additional parcels 220.00
Total $404.00

2—Will the remaining portion of defendant Rindge Company's land, not sought to be taken, be damaged by reason of the severance there-
4011 from of the part which is sought to be taken?

Answer No.

3—If your answer to the last interrogatory was in the affirmative, what do you find the amount of such severance damage to be?

Answer None

4—How many miles of fencing will it be necessary to construct on the property of defendant Rindge Company by reason of the taking and use for public highway purposes of the land sought to be taken from defendant Rindge Com-

4012 pany? This question must be answered in the light of the concession made by plaintiff, which I have quoted in the instruction.

Answer 3.87 miles

5—What kind of fencing will be suitable to *the* constructed on the land of defendant Rindge Company by reason of such taking and use of its land sought to be taken?

Answer. Thirty-six inch woven wire with
4013 two barbed wires above, with suitable posts.

6—What will be the cost of such fencing on the land of defendant Rindge Company?

Answer $675.00 per mile—total $2612.25

What, on the 24th day of January, 1918, was the actual market value of the land sought to be taken from Hueneme, Malibu and Port Los Angeles Railway Company?

Answer—None.

To the said verdict thus rendered (except as
4014 to the form of the same), and to each and every part thereof, and to each and every finding of the jury therein, the defendant in the said Alisos Canyon road case, No. B-59,443, then and there duly excepted.

Exception No. 74.

That thereafter, and without the taking of any further evidence, the said cases and each of them were argued and submitted to the court for its findings and decision on each and all and every

of the remaining issues therein and in each thereof.

That pending his decision in said cases, the court, by and with the consent of counsel for all parties, and accompanied by the officers of the court and by the attorneys for all parties, and by the witness F. B. Scotton, made a trip of two days' duration, principally on horseback, over the various roads and trails referred to in the testimony, to-wit:

First: Commencing at Triunfo post office, by automobile to a point on the so-called Triunfo-Decker near the foot of Malloy Hill; there the party left the automobiles and proceeded on horseback to Charlie Decker's place near the head of Alisos Canyon, traveling the so-called Triunfo-Decker road and passing Vaughn's place, X-5 on the map, Exhibit 6, and the school house. From Decker's place they rode southerly to the northerly grant (boundary) line of the Malibu Ranch at a point near the center-line stake of the end of the survey for the Alisos Canyon road, which stake was shown to them. Returning, after reaching the point X-5, Vaughn's place, the party turned off to the right into the so-called Cornell-Decker road, proceeding northeasterly past Shirley Slide and Nigger Hill on said road to Cornell. At Cornell the horses were abandoned, and the party proceeded by automobiles along the Cor-

4018 nell-Triunfo road into the Russell Ranch and to the point of commencement.

On the second day the party went by automobile up the Triunfo-Decker road to a point in the upper Triunfo Canyon where the Yerba Buena trail, approximately indicated by the large red dots on Exhibit 6, branches off from the Triunfo-Decker road; from there they proceeded on horseback along the trail in question in a southwesterly direction up Triunfo Canyon to
4019 a point near its upper end in the mountains, and then on over Triunfo Pass, along the trail and across various canyons until they reached the Yerba Buena settlement, passing the school house and several of the settlers' places to the place of John Fitzpatrick. From the Fitzpatrick place they commenced their return trip, passing over the ridge or hogback to the rear and westerly of said place; then down into Serrano Canyon
4020 and along that canyon to its junction with Big Sycamore Canyon, and down Big Sycamore Canyon to the Hueneme county road on the Borchard Ranch. At this point the horses were abandoned, and the party returned to Los Angeles in automobiles.

"Thereafter on the 10th day of December, 1918, the following stipulation was entered into and filed with the clerk of the court:

4021 'Title of Court and Cause.

'STIPULATION AS TO ENTRY OF JUDGMENT AND SERVICE OF COST BILL.

'It is hereby stipulated and agreed by and between the respective parties to the above entitled action through their respective counsel:

First: That the judgment in the above entitled cause need not be entered within twenty-four (24) hours after the rendition of the ver-
4022 dict, but that such judgment may be entered upon or after the filing of the findings of fact and conclusions of law by the court in the same manner as in cases tried by the court without a jury;

Second: That the memorandum of costs and disbursements need not be served or filed within five (5) days after the verdict, but that the same may be served and filed within five (5) days after notice that the findings of fact and con-
4023 clusions of law made by the court have been filed.

Dated December 10, 1918.

A. J. HILL,
County Counsel;
CHARLES S. BURNELL,
Deputy County Counsel;
PAUL VALLEE,
Deputy County Counsel,
Attorneys for Plaintiff.
ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for All Defendants Who Have Filed Answers Herein."

4024 That thereafter, and on January 11, 1919, the court rendered its decision in favor of the plaintiff and against the defendants, which decision was in words and figures following, to-wit:

"In the Superior Court of the state of California, in and for the county of Los Angeles.

County of Los Angeles, plaintiff, vs. The Rindge Company *et al.*, defendants.

No. B-43572.

4025 No. B-59443.

No. B-65893.

DECISION ON QUESTIONS OF NECESSITY.

"The county of Los Angeles instituted the above numbered three separate special proceedings to condemn for public use, to-wit, for road purposes, certain property of the defendants aforesaid. The property sought to be condemned lies entirely within the Rancho Malibu,

4026 is situated in the county of Los Angeles, state of California, and consists of three strips of land each forty feet in width, and sufficient contiguous parcels of land at the sides of said strips to build three roads, each to grade twenty-two feet wide. The proceedings, while not consolidated, were, by agreement of the parties, tried simultaneously. For convenience they have been called throughout the trial 'The Main Malibu Road Case,' 'The Los Alisos Road Case' and 'The Beach Road Case,' respectively. A jury

was regularly impaneled and in each case the issues of compensation for the taking of said property have been determined by said jury by special findings made and filed herein. There remain three questions for decision by the court. These questions are: First, whether there existed public necessity for the proposed roads at the respective times when the board of supervisors regularly passed resolutions of necessity and directed the county counsel to begin condemnation proceedings; second, whether the property sought to be condemned is necessary for the proposed roads, and, third, whether the proposed roads are planned or located in the manner which will be most compatible with the greatest public good and the least private injury.

"These questions usually in eminent domain proceedings are determined by the legislative branch of government, and when regularly determined by it, are not thereafter subject to judicial inquiry or review; but inasmuch as it is conceded that the board of supervisors in each of these cases have failed to pursue the course required by sections 2681 and 2698 inclusive of the Political Code, which is the usual method adopted by counties in laying out new roads and taking property necessary therefor, we have held during the trial that they become judicial questions in each of these cases.

4030 "Defendants' counsel have earnestly and with great force contended that these causes should be dismissed because of the failure of the board of supervisors to take such steps as are required by the aforesaid sections of the Political Code. They argued that such steps were mandatory in all cases and provided the sole and exclusive method or scheme under which counties in California can lay out new roads. The court cannot agree with this contention and during the trial
4031 assigned fully its reasons therefor. To repeat them would prolong this statement uselessly. Suffice it to say that we believe that there are two independent alternative methods provided by the statutes of California whereby counties, through their respective boards of supervisors, can lay out and open new roads and acquire lands therefor by condemnation proceedings, one being the method devised by said sections of
4032 the Political Code and the other being that taken by plaintiff in each of these cases, to-wit, by direct condemnation proceedings under title 7, part 3, of the Code of Civil Procedure under authority of the power conferred on boards of supervisors by subdivision 4 of section 2643 of the Political Code.

"When the board of supervisors adopts the scheme provided by section 2681 *et seq.* of the Political Code, its action in determining the three questions mentioned in the beginning of

this statement is final and conclusive on the courts because section 1241 of the Code of Civil Procedure provides that before property can be taken under the right of eminent domain, it must appear 'First, that the use to which it is applied is a use authorized by law; second, that the taking is necessary to such use, provided when the legislative body of the county * * * shall by resolution or ordinance adopted by vote of two-thirds of all its members have found and determined that the public interest and necessity require the acquisition, construction or completion by such county of any proposed public utility or any public improvement and the property described in such resolution or ordinance is necessary therefor, such resolution or ordinance shall be conclusive evidence (a) of the public necessity of such proposed public utility or public improvement; (b) that such property is necessary therefor, and (c) that such proposed public utility or public improvement is planned or located in the manner which will be most compatible with the greatest public good and the least private injury.' But when, as in the cases at bar, the board of supervisors act directly under title 7 of part 3 of the Code of Civil Procedure, by virtue of the power granted it by subdivision 4 of section 2643 of the Political Code, their action in determining the three questions by duly passing a sufficient

ordinance or resolution is not conclusive evidence of their existence, but merely establishes them in a *prima facie* manner. Accordingly we ruled in each of these cases that when plaintiff proved the required passage, which it did, of the resolution of the board of supervisors declaring that there existed a public necessity for the establishment of these roads in the manner proposed, there arose *eo instante* a presumption of such public necessity which could be overthrown only by clear and convincing proof to the contrary, and that the burden of overthrowing and removing the presumption rested on the defendants. While the exact question now under discussion has never been considered or decided by the Supreme or Appellate Courts of our state, there is language in City of Pasadena v. Stimson, 91 Cal. 238, and County of Riverside v. Alberhill Coal & Clay Co., 34 Cal. App. 538, which supports this court's view of the question. On principle it seems to us that it would be unreasonable to hold that in every case where a new road is necessary or desirable the board of supervisors must adopt the expensive and dilatory viewers' method provided by sections 2681 *et seq.* of the Political Code although it is positively known by them before any steps whatever are taken to lay out a new road that the landowners, whose property must be taken to build the road, will under no circumstances con-

4039 sent to it being built and will not accept any award that might be made by the viewers for the land necessary to be taken, but will require condemnation proceedings in court.

"The evidence in these cases shows such to be defendants' attitude. Mrs. May K. Rindge, who either in her individual capacity, or as the active head and director of the Rindge Company, a corporation, controls and manages the
4040 entire Malibu Ranch properties, has testified that she did not want a public road through the ranch and that she has always opposed the efforts of the public authorities to establish one. Under such a position nothing could be accomplished by pursuing the viewers' method under sections 2681 *et seq.* of the Political Code except the loss of time and an extravagant and unjustifiable expenditure of public money. Under our construction of the law in these
4041 cases, the defendants have lost no right or remedy which they could have asserted if the viewers' method aforesaid had been adopted by the board of supervisors.

"With the law thus declared, we have made a careful review of the evidence, which is voluminous and which was elicited by able and astute counsel with great diligence. In order to better understand and analyze the evidence we have made several excursions to the Malibu Ranch

4042 and have traversed the mountain regions to be affected by these proposed roads, inspecting on such tours not only the routes and termini of the proposed roads, but the present ways of travel available to the settlers to the north and west of the Malibu Ranch as well. Our conclusion is that as to the main Malibu road and the Los Alisos road, the three questions submitted for decision must be answered as contended by the plaintiff.

4043 "The proposed main road commences at the easterly end of the Malibu Ranch, which is at Los Flores Canyon where said canyon terminates on the beach of the Pacific Ocean, and it traverses in a general westerly direction the entire length of said ranch in Los Angeles county, a distance of about twenty-two miles, terminating at the Ventura county line. It will be, if constructed, a prolongation or continuation

4044 of the present popular and muchly traveled county highway that extends along the shore of the ocean from the city of Santa Monica to Los Flores Canyon, a distance of about ten miles.

"The defendants have at the present time a road through their ranch for the entire distance of the proposed main Malibu road. This private road is constantly used by the owners and employees of the ranch and by such other persons as obtain permission from the owners to travel over it. This road or at least much of it

4045 was formerly and for many years traveled by many farmers and settlers without hindrance. These settlers had located to the north and west of the ranch on government land in Los Angeles and Ventura counties, some of them taking up their claims and farming them as far back as the early eighties, during which time they constantly used roads across the ranch, going from their homes to the markets and cities of
4046 Santa Monica and Los Angeles and vicinity. The proof in this case showed that many of these folks had taken up their claims under the assumption that they had a right to cross the Malibu Ranch by means of the roads thereon. In this they were mistaken, for our Supreme Court in April, 1917, decided that there was no public highway across the Malibu Ranch and that the roads which they had been using thereon in order to reach their homes and farms
4047 were private roads and all outsiders using a way or road on the ranch were declared to be trespassers or licensees. (People v. Rindge, 174 Cal. 743.) Shortly after this decision the owners of the ranch destroyed with dynamite certain portions of road which had been used as aforesaid through their property and placed locked gates and fences at such points thereon so as to effectively obstruct passage to the east, north and west. It has been shown since the

4048 closing of these ways many of the settlers and their families have been compelled to abandon their places because of their inaccessibility and the impossibility of bringing their crops to market. It is true that the settlers whose places are located to the north of the Malibu Ranch or in what has been described throughout the case as the Decker region, can reach their lands through trails and roads connecting with the
4049 state highway running from Los Angeles to Ventura, and that since the closing of the Malibu Ranch to travel they have done so. These ways, however, have been shown to be for the greater part across and through private property and are generally circuitous, narrow, steep and wholly inadequate for loaded motor or animal drawn vehicles. The contention of defendants that these ways furnish ample means of travel to the settlers in the so-called Decker region or
4050 at least that they could be made satisfactory roads by the county spending much less money than will be required to construct and maintain the proposed roads, is in our opinion not borne out by the evidence. Moreover, it has been shown that under the Supreme Court decision in People v. Rindge, *supra*, they would after improvement be but private roads, the permission to use them being revocable any time by the owners of property through which they run.

"The proof showed that many of the grades on the routes now used by the Decker region settlers are from twenty per cent to thirty per cent, and that by proper engineering and road construction they could not be reduced to any extent, whereas the average grade on both the proposed main Malibu and Los Alisos roads is but eight per cent and the maximum grade, which is on the proposed Los Alisos road for a short distance only, is but fourteen per cent.

"It is further claimed that the proposed Los Alisos road terminating at the northern line of the ranch property where it joins the property of Ernest Decker will accommodate, and be of no use to any persons except the Decker family. It is reasonable to assume, however, that the authorities will later establish a continuation of this road through the Decker property so as to accommodate the other settlers and families living in the Decker region, who, by the way, are now permitted to use at will the private roads across and through the Decker properties.

"My conclusion as to the settlers in the so-called Decker region is that at the present time there is no adequate, sufficient or satisfactory road or way by which they can haul provisions or products to or from their places and that the proposed main Malibu road, in conjunction with the proposed Los Alisos road, which is a lateral leaving the main road near Los Alisos Canyon

4054 and running northerly along the easterly side of said canyon to the northern line of the Malibu Ranch, will supply their need for a road to and from the markets of Los Angeles, in a manner that will be most compatible with the greatest public good and the least private injury.

"Much testimony was taken as to the needs of the farmers and ranchers of the Yerba Buena Canyon for a road. Yerba Buena Canyon lies
4055 in Ventura county, a few miles west of the western terminus of the proposed main Malibu road, and the ordeals of the inhabitants of this canyon, since the closing of the Malibu Ranch to travel in 1917, have been many. They have been in an almost unbearable position as far as road conditions are concerned. Attracted by the fertility of the soil, many of these people migrated into this canyon many years ago and by industry and frugality the canyon has been
4056 transformed into a veritable garden, dotted by orchards and farms. Like their neighbors in the so-called Decker region, they settled in the Yerba Buena district under the belief that they had the right to use a road across the Malibu Ranch which connected in Ventura Canyon with another old established and used road known as the Jaspar-Thomas-Mondel road, which led directly into Yerba Buena Canyon, and provided the settlers with a road to and from the city of Los Angeles. These roads they traveled and

used for many years and they were the only roads to their places adequate for wagons or motor vehicles. At the present time there is no wagon or vehicle road from their places to Los Angeles, or any other place, and the only method of getting the necessities of life or provisions of any kind is by pack animals from the state highway several miles to the north, and over high mountain passes, and almost perpendicular mountain trails. It is as to these Yerba Buena settlers that we believe the greatest necessity exists for the construction of the proposed main Malibu road. They are less fortunate than the inhabitants of the so-called Decker region, for the last mentioned people can, by expert horsemanship, or unusual ability as motorists, reach some of the places in that district by wagon or automobile, but the Yerba Buena inhabitants must, in order to reach any place on earth, 'steal across private property,' and up and down steep mountain passes which are wholly inadequate and unsafe for animal-drawn or motor-vehicles. It is difficult to conceive of any region that is more isolated and inaccessible than the Yerba Buena district since roads to and across the Malibu Ranch were closed in 1917. The farms and orchards, although apparently very productive and well kept, are practically worthless because of the utter impossibility of marketing the products.

4060 "It is urged by defendants that no necessity exists for a road from Los Angeles along the beach through their property to these people because, they assert, they can be adequately accommodated by a road built from the state highway to the north, either through Sycamore Canyon and across the mountains to Yerba Buena Canyon or over the high Triunfo Pass. We are satisfied neither of the routes suggested
4061 would be adequate and that no route would supply the necessity for a road as thoroughly and properly as the proposed main Malibu road.

"The claim of defendants that because geographical lines have placed these people and their homes and farms in Ventura county, the county of Los Angeles owes them no consideration, is in our opinion without merit. Assuming without deciding that as residents of Ventura county they have no claim on the county of
4062 Los Angeles, the residents of the last mentioned county have undoubtedly the right to require the building of a road whereby they can visit and have business intercourse with the Yerba Buena farmers. This they are attempting to do by these proceedings.

"It has been held by our Supreme Court that not only present conditions of a locality may be considered in determining the necessity for a road, but also those which may reasonably be anticipated. (Central Pac. Ry. Co. v. Feldman,

4063 152 Cal. 304.) Therefore, because there is at present no road of any kind from the Yerba Buena settlement in Ventura county to the western terminus of the proposed main Malibu road, furnishes no reason to hold that the main road is unnecessary. It is proper and fair to anticipate that the authorities of Ventura county will establish a road from Yerba Buena to the western terminus of the proposed main Malibu road.

4064 "But we believe that under the evidence a legal public necessity has been shown for the main Malibu road, aside from its need as a highway of commerce to the settlers and farmers of the Decker and Yerba Buena districts. If an improvement is useful and convenient to the public and is a benefit of sufficient importance to warrant the public in incurring the expense of making it, it is a public necessity. The public necessities change with the progress of

4065 society and here in Southern California especially the development and general use of motor vehicles has created new public necessities which demand and should receive the attention and action of the governmental authorities. If for no other purpose than to afford outdoor life and recreation to the people of Los Angeles county by a scenic highway, we believe the proposed main Malibu road to be a public necessity. As proposed, said road traverses a stretch of land, the natural beauty of which is unique and di-

4066 verse. To the south can be seen the broad Pacific, with its variegated waters and many shaped islands, while immediately to the north stand the majestic Santa Monica Mountains; up hill and down dale the road wends its way through wooded canyons and across verdant mesas, ever revealing to the traveler a panorama of rare charms. It is easy to conceive the pleasure and recreation and the incalculable benefit that will be afforded the public by the building of this
4067 main Malibu road. A public necessity for a road may exist although the road may serve no purpose of business or duty. It is sufficient that there is an exigency for the exercise of a lawful public right, though it be only for the purpose of amusement or recreation, as a way for travel to a public park or common, to a place of historic interest or remarkable or pleasing natural scenery.

4068 (Higginson v. Mahant etc., 11 Allen 535.)

* * * "The testimony of H. I. Comely, the deputy county surveyor, who ran the survey and established the proposed right-of-way, showed that the lands sought to be condemned in the main Malibu road case and Los Alisos road case are necessary to establish the proposed roads and demonstrated to our mind that each of said roads is planned in a manner compatible with the greatest public good and the least private injury. No effort has been made to controvert

this testimony and it is, therefore, conclusive in these cases.

"It has been urged by defendants that because these roads will cost the taxpayers of Los Angeles county several hundred thousand dollars to build, this court should refuse to decree condemnation herein. We believe that such is not the law. The question as to the expediency or advisability of expending sufficient public money to build these roads is one of policy for the legislative branch of government to decide and is not a proper question to be decided by the court in these cases.

"Notwithstanding the decrees of condemnation hereby ordered in the main Malibu road case and Los Alisos road case, it may yet appear to the supervisors inadvisable or inexpedient to build the proposed roads. Until the jury's award in these cases they could have no knowledge as to the cost of the proposed roads to the taxpayers. They are now fully informed thereof and can proceed with or abandon the project according to their sound discretion and judgment.

"The defendants' motion to strike out testimony, which was made and submitted during the trial, is denied *in toto*. A judgment and decree of condemnation is ordered for the plaintiff in the main Malibu road case and Los Alisos road case, in accordance with the prayer of its com-

4072 plaints therein, respectively, * * *. Counsel will prepare findings and decrees accordingly.

Dated January 11th, 1919.

PAUL J. McCORMICK,
Judge."

That thereafter, and on the 6th day of February, 1919, a notice of such decision was served upon counsel for defendants, and filed with the clerk of the court, which notice of decision is in
4073 words and figures following, to-wit:

"Title of Court and Cause.

NOTICE OF DECISION.

"*To the Defendants Herein and to Messrs. Anderson and Anderson, and Nathan Newby, Their Attorneys:*

"You, and each of you, will please take notice that the findings of fact and conclusions of law in the above entitled cause, duly signed by the
4074 court, were filed herein on the 30th day of January, 1919, and that the interlocutory judgment of condemnation herein was signed by the court and duly filed in the office of the county clerk of Los Angeles county on the 5th day of February, 1919.

Dated this 6th day of February, 1919.

A. J. HILL,
County Counsel;
CHARLES S. BURNELL,
Deputy County Counsel, and
PAUL VALLEE,
Deputy County Counsel."

That thereafter, and on the 21st day of February, 1919, a stipulation was entered into and filed, which stipulation is in words and figures following, to-wit:

"Title of Court and Cause.

"STIPULATION AS TO COST BILL.

"It is hereby stipulated that all of the costs of the defendants in the above-entitled action may be deemed to have been expended by the defendant, Rindge Company, and that no memorandum of costs and disbursements need be filed by any of the other defendants, and that the expenditures and costs allowable by law of all of the defendants may be included in the memorandum of costs and disbursements of the defendant, Rindge Company, and judgment therefor be entered in behalf of said defendant, Rindge Company.

Dated February 21st, 1919.

A. J. HILL,
County Counsel;
CHARLES S. BURNELL,
Deputy County Counsel;
PAUL VALLEE,
Deputy County Counsel,
Attorneys for Plaintiff.
ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Defendant."

4078 Thereafter, to-wit: on January 30th, 1919, the court in said main road case made and filed its findings of fact and conclusions of law in favor of the plaintiff and against the defendants and ordered that judgment be entered accordingly, which findings of fact and conclusions of law are a part of the judgment roll in said case.

That thereafter, to-wit: on February 5th, 1919, the court made and filed its so-called "Interlocutory Judgment of Condemnation" in said
4079 suit, which said interlocutory judgment in said main road case was thereafter on February 11th, 1919, duly docketed and entered by the clerk of this court, and is a part of the judgment roll in said main road case.

"That thereafter, and on the 15th day of March, 1919, plaintiff served and filed a notice of deposit in words and figures following, to-wit:

4080 'Title of Court and Cause.

'NOTICE OF DEPOSIT OF AMOUNT OF JUDGMENT WITH CLERK OF COURT.

'To the Defendants, Rindge Company, a Corporation, May K. Rindge and [illegible] Hueneme, Malibu and Southern Railwa[illegible]ompany, a Corporation, and to Their Attorneys, Messrs. Anderson & Anderson and Nathan Newby, Esq.:

"You, and each of you, will please take notice that on this 18th day of March, 1919, the

County of Los Angeles, plaintiff herein, has deposited with H. J. Lelande, county clerk of the county of Los Angeles and *ex-officio* clerk of the Superior Court of said county, the amount of the judgment in the above-entitled action for said defendants respectively as follows:

'For the defendant, Rindge Co., a corporation, the sum of $30,515.37, being the amount required to be paid to said defendant by the judgment in the above entitled action; and $2,381.38, being the amount fixed as costs in said action.

'For the defendant, May K. Rindge, the sum of $7,498.62, being the amount required to be paid to said defendant by the judgment in the above-entitled action.

'For the defendant, Hueneme, Malibu & Southern Railway Company, a corporation, the sum of $66.75, being the amount required to be paid to said defendant by the judgment in the above-entitled action.

Dated Los Angeles, Cal., March 15, 1919.

A. J. HILL,
County Counsel;
CHARLES S. BURNELL,
Deputy;
PAUL VALLEE,
Deputy.'"

That thereafter and within the time allowed by law the defendants in said main road case

served and filed their notice of intention to move for a new trial thereof, in the words and figures following, to-wit:

(Title of Court and Cause.)

"No. B-43,572.

"NOTICE OF INTENTION TO MOVE FOR A NEW TRIAL.

"To the Plaintiff, and to Messrs. A. J. Hill, County Counsel; Paul Vallee, Deputy County Counsel, and Charles Burnell, Deputy County Counsel, Its Attorneys:

"You and each of you will please take notice that the defendants in the above-entitled action intend to move the court to vacate and set aside the verdict of the jury upon the issues submitted to the jury, and the decision of the court as to those issues decided by the court, and to grant a new trial of said action upon the following grounds:

"1. Insufficiency of the evidence to justify the verdict of the jury on the issues submitted to the jury, and insufficiency of the evidence to justify the decision of the court as to those issues decided by the court;

"2. That said verdict of the jury and said decision of the court are against law;

"3. Errors in law occurring at the trial and excepted to by said defendants.

4087 "Said motion will be made upon the minutes of the court in said action.

"Dated February 15, 1919.

"ANDERSON & ANDERSON,

"NATHAN NEWBY,

Attorneys for Said Defendants."

That thereafter, and within the time allowed by law, the defendants, pursuant to said notice of intention, moved the court as therein stated
4088 and upon each and all and every of the grounds therein stated; and said motion for a new trial in said main road case was thereupon argued and submitted to the court for its decision; and thereafter on April 3rd, 1919, the court in said main road case made and caused to be entered the following order in the matter of said motion for a new trial, to-wit:

"No. B-43,572.

4089 Thursday, April 3rd, 1919.

County of Los Angeles vs. The Rindge Co. *et al.*

The motion for a new trial heretofore heard and submitted. Defendants' motion for a new trial herein is denied, except as to the issue of suitable fences, which issue under a stipulation and concession submitted to the jury herein, under this concession it was the duty of the jury to have found that no less than 31.5 miles of fencing was necessary on the land and prop-

erty of defendant Rindge Company, a corporation, and inasmuch as the jury failed to so find, a new trial on the issue of necessary suitable fences will be ordered unless within two (2) days from this date the plaintiff herein files with the clerk of this court consent in writing to the allowance of 31-5/10 miles of fencing at the rate and of the kind found by the jury herein. If such written consent is filed as aforesaid, the motion of defendants for a new trial is denied *in toto.*"

To this order and ruling and to the whole thereof and to each and every part thereof specifically, the defendants in said main road case then and there excepted.

Exception No. 75.

That thereafter, but on the said April 5th, 1919, the attorneys for the plaintiff in said main road case served upon the attorneys for the defendants and filed with the clerk of this court a document entitled "Stipulation and Election," which was and is in the words and figures following, to-wit:

(Title of Court and Cause.)

"No. B-43,572.

STIPULATION AND ELECTION.

"Plaintiff, County of Los Angeles, hereby stipulates, agrees and consents to the allowance of 31.5 miles of 36 inch woven wire fence, with

two barb wires above, and suitable posts, at the rate of $650 per mile, as necessary on the land and property of the defendant, Rindge Company, a corporation, by reason of the taking and use for public highway purposes of the land sought to be taken from the defendant Rindge Company, and hereby stipulates and agrees to deposit with the clerk of the court for the defendant Rindge Company, in addition to the amounts heretofore deposited, the sum of $1625.

"Plaintiff, County of Los Angeles, hereby stipulates, agrees and elects to build and construct 6.6 miles of 36 inch woven wire fence, with two barb wires above, and suitable posts, on the property of the defendant May K. Rindge, as specified in the verdict of the jury in the above-entitled action, which are the fences for which damages have been assessed in said action in favor of the defendant May K. Rindge; and

"Plaintiff, County of Los Angeles, hereby agrees, stipulates, agrees and elects to build and construct 31.5 miles of 36 inch woven wire fence, with two barb wires above, and suitable posts, on the property of the defendant Rindge Company, a corporation, as specified by the verdict of the jury and the order denying the motion for a new trial in the above-entitled action, which are the fences for which damages

4096 have *have* been assessed in said action, in favor of defendant Rindge Company.

Dated Los Angeles, California, Apr. 4, 1919.

"A. J. HILL,
County Counsel;
C. S. BURNELL,
Deputy County Counsel;
PAUL VALLEE,
Deputy County Counsel;
"Attorneys for Plaintiff."

4097

To the filing of said "Stipulation and Election," and to the said "Stipulation and Election" and to the whole and to each and every part thereof, the defendants in said main road case then and there excepted.

Exception No. 76.

That annexed to and filed with said "Stipulation and Election" there was an *ex parte* order
4098 of the court in the words and figures following, to-wit:

"It is hereby ordered, that the plaintiff have ten days from the date hereof in which to deposit with the clerk of the court the sum of $1625, being the amount necessary to build 2.5 miles of fencing under the verdict of the jury in the above-entitled action, which is the number of miles consented by the plaintiff to be allowed in addition to the number of miles found necessary by the jury.

4099 "Dated Los Angeles, California, April 4th, 1919.

"PAUL J. MCCORMICK,
Judge."

To the making of said order and of the whole thereof, and also to the filing of the same in said main road case, the defendants in said case then and there duly excepted.

Exception No. 77.

4100 "That thereafter, and on the 18th day of March, 1919, plaintiff served and filed a notice of deposit in words and figures following, to-wit:

'Title of Court and Cause. No. B-59443.

'NOTICE OF DEPOSIT OF AMOUNT OF JUDGMENT WITH CLERK OF COURT.

'To the Defendant, Rindge Company, a Corpo-
4101 *ration, and to Its Attorneys, Messrs. Ander-*
son & Anderson and Nathan Newby, Esq.:

'You and each of you, will please take notice that on the 18th day of March, 1919, the County of Los Angeles, plaintiff herein, has deposited with H. J. Lelande, county clerk of the county of Los Angeles and *ex officio* clerk of the Superior Court of said county, the amount of the judgment in the above entitled action for said defendant as follows:

'For the defendant, Rindge Company, a corporation, the sum of $3,016.25, being the amount

4102 required to be paid to said defendant by the judgment in the above entitled action.

'Dated: Los Angeles, California, March 18, 1919.

A. J. HILL,
County Counsel;
CHARLES S. BURNELL,
Deputy County Counsel;
PAUL VALLEE,
Deputy County Counsel;
4103 *Attorneys for Plaintiff.'"*

"That thereafter and on the 5th day of April, 1919, the plaintiff served and filed stipulation and election to fence in words and figures following, to-wit:

'Title of Court and Cause.

STIPULATION AND ELECTION.

'Plaintiff, County of Los Angeles, hereby
4104 stipulates, agrees and consents to the allowance of 31.5 miles of 36 inch woven wire fence, with two barb wires above, and suitable posts, at the rate of $650 per mile, as necessary on the land and property of the defendant Rindge Company, a corporation, by reason of the taking and use for public highway purposes of the land sought to be taken from the defendant Rindge Company, and hereby stipulates and agrees to deposit with the clerk of the court for the defend-

ant Rindge Company, in addition to the amounts heretofore deposited, the sum of $1625.

'Plaintiff, County of Los Angeles, hereby stipulates, agrees and elects to build and construct 6.6 miles of 36 inch woven wire fence, with two barb wires above, and suitable posts, on the property of the defendant May K. Rindge, as specified in the verdict of the jury in the above entitled action, which are the fences for which damages have been assessed in said action in favor of defendant May K. Rindge; and

'Plaintiff, County of Los Angeles, hereby stipulates, agrees and elects to build and construct 31.5 miles of 36 inch woven wire fence, with two barb wires above, and suitable posts, on the property of the defendant Rindge Company, a corporation, as specified by the verdict of the jury and the order denying the motion for a new trial in the above entitled action, which are the fences for which damages have been assessed in said action, in favor of defendant Rindge Company.

Dated Los Angeles, California, April 4, 1919.

A. J. HILL,
County Counsel;
CHARLES S. BURNELL,
Deputy County Counsel;
PAUL VALLEE,
Deputy County Counsel;
Attorneys for Plaintiff.

'It is hereby ordered, that the plaintiff have ten days from the date hereby in which to deposit with the clerk of the court the sum of $1625, being the amount necessary to build 2.5 miles of fencing under the verdict of the jury in the above entitled action, which is the number of miles consented by the plaintiff to be allowed in addition to the number of miles found necessary by the jury.

Dated Los Angeles, California, April 4th, 1919.

PAUL J. MCCORMICK,
Judge.'"

That thereafter, to-wit: on the said 5th day of April, 1919, the court *and* caused to be entered an order in the said main road case in the words and figures following, to-wit:

"B-43,572.

April 5th, 1919.

"The County of Los Angeles etc. vs. The Rindge Company *et al.*

The plaintiff files notice of election to fence and stipulation of election.

It appearing to the court that the plaintiff in the above-entitled action has this day filed its consent in writing pursuant to an order of the court made April 3rd, 1919,

"The defendants' motion for a new trial herein is denied *in toto.*"

That said order was made *ex parte* and without any notice of any kind to either of the defendants in the said main road case or their attorneys; and to the making of said order and the whole thereof the defendants in said case then and there duly excepted.

Exception No. 78.

That thereafter, to-wit: on April 18th, 1919, the court made and filed in said main road case a "Final Order of Condemnation," which said last-mentioned order was thereafter, on April 29th, 1919, duly docketed and entered by the clerk of this court, and which said order was and is in the words and figures following, to-wit (omitting the descriptions of the property ordered condemned, which are the same in every respect as the descriptions of the property sought to be condemned contained in the complaint in the main road case):

(Title of Court and Cause.)

"No. B-43572.

FINAL ORDER OF CONDEMNATION.

"It appearing to the satisfaction of the court that the plaintiff in the above-entitled action has deposited with H. J. Lelande, county clerk of Los Angeles county and *ex-officio* clerk of the Superior Court of said county, for the defendants herein, as required by that certain inter-

4114 locutory judgment of condemnation made and filed in the above-entitled cause on the 5th day of February, 1919, and recorded in book 431 of judgments, page 152, records of the clerk of the above-entitled court, as follows:

"The sum of $30,515.37 and costs in the sum of $2,381.38 for the defendant, Rindge Company, a corporation;

"The sum of $7,498.62 for the defendant, May K. Rindge; and

4115 "The sum of $66.75 for the defendant, Hueneme, Malibu & Southern Railway Company, a corporation; and

"The court having, on the 3rd day of April, 1919, made and filed with the clerk of the court an order in words following, to-wit:

" 'Defendants' motion for a new trial herein is denied except as to the issue of suitable fences, which issue was under a stipulation and

4116 concession submitted to the jury herein. Under this concession it was the duty of the jury to have found that no less than 31.5 miles of fencing was necessary on the land and property of defendant Rindge Company, a corporation, and inasmuch as the jury failed to so find, a new trial on the issue of necessary suitable fences will be ordered unless within two (2) days from this date the plaintiffs herein file with the clerk of this court consent in writing to the allowance of 31-5/10 miles of fencing at the rate and of

4117 the kind found by the jury herein. If such written consent is filed as aforesaid, the motion of defendant for a new trial is denied *in toto*.

Apr. 3, 1919.

(Signed) PAUL J. MCCORMICK, *J.*'

And

"It further appearing to the satisfaction of the court that on the 5th day of April, 1919, the plaintiff, County of Los Angeles, filed a
4118 stipulation and election with the clerk of the court in words following, to-wit:

" 'Plaintiff, County of Los Angeles, hereby stipulates, agrees and consents to the allowance of 31.5 miles of 36 inch woven wire fence, with two barb wires above, and suitable posts, at the rate of $650 per mile, as necessary on the land and property of the defendant Rindge Company, a corporation, by reason of the taking and use for public highway purposes of the land
4119 sought to be taken from the defendant Rindge Company, and hereby stipulates and agrees to deposit with the clerk of the court for the defendant Rindge Company, in addition to the amounts heretofore deposited, the sum of $1625.

" 'Plaintiff, County of Los Angeles, hereby stipulates, agrees and elects to build and construct 6.6 miles of 36 inch woven wire fence, with two barb wires above, and suitable posts, on the property of the defendant, May K. Rindge, as specified in the verdict of the jury

in the above-entitled action, which are the fences for which damages have been assessed in said action, in favor of defendant, May K. Rindge; and

" 'Plaintiff, County of Los Angeles, hereby stipulates, agrees and elects to build and construct 31.5 miles of 36 inch woven wire fence, with two barb wires above, and suitable posts, on the property of the defendant, Rindge Company, a corporation, as specified by the verdict of the jury and the order denying the motion for a new trial in the above-entitled action, which are the fences for which damages have been assessed in said action, in favor of defendant, Rindge Company.

"Dated Los Angeles, California, Apr. 4, 1919.

A. J. HILL,
County Counsel;
C. S. BURNELL,
Deputy County Counsel;
PAUL VALLEE,
Deputy County Counsel;
Attorneys for Plaintiff.

" 'It is hereby ordered, that the plaintiff have ten days from the date hereof in which to deposit with the clerk of the court the sum of $1625, being the amount necessary to build 2.5 miles of fencing under the verdict of the jury in the above-entitled action, which is the number

4123 of miles consented by the plaintiff to be allowed in addition to the number of miles found necessary by the jury.

"'Dated Los Angeles, California, Apr. 4, 1919.

PAUL J. MCCORMICK,
Judge.'

"And it further appearing to the court that on the 14th day of April, 1919, plaintiff County
4124 of Los Angeles, in compliance with said order made and filed on the 3rd day of April, 1919, and in compliance with said stipulation and election filed on the 5th day of April, 1919, did deposit with H. J. Lelande, county clerk of Los Angeles county and *ex-officio* clerk of the Superior Court of said county, for the defendant, Rindge Company, the further sum of $1625;

"Now, therefore, on motion of A. J. Hill, county counsel; Charles S. Burnell, deputy
4125 county counsel, and Paul Vallee, deputy county counsel, attorneys for plaintiff, it is ordered, adjudged and decreed that the parcels of land hereinafter described be, and the same are hereby condemned for public highway purposes.

"Said properties so condemned for public highway purposes are more particularly described as follows:

"Land of defendant, May K. Rindge: (Description.) * * *

4126 "Land of defendant, Rindge Company, a corporation: (Description.) * * *

"Lands of defendant, Hueneme, Malibu and Southern Railway, a corporation: (Description.) * * *

"Done in open court this 18th day of April, 1919.

PAUL J. McCORMICK,
Judge of the Superior Court."

4127 That said "Final Order of Condemnation" in said main road case was made *ex parte*, and without any notice to either of the defendants in said case or to either or any of their attorneys; and to the said order and to the whole thereof and to each and every part thereof the defendants then and there excepted.

Exception No. 79.

"That thereafter, and on the 25th day of April, 1919, the plaintiff served and filed a
4128 notice of final order of condemnation in words and figures following, to-wit:

'(Title of Court and Cause.)'

'NOTICE OF FINAL ORDER OF CONDEMNATION.

'To the Defendant Rindge Company, a Corporation, May K. Rindge and Hueneme, Malibu & Southern Railway Company, a Corporation, and to Messrs. Anderson & Anderson and Nathan Newby, Their Attorneys:

'You and each of you will please take notice that the final order of condemnation in the

4129 above entitled action was signed by the court and filed with the clerk of the court on the 18th day of April, 1919.

'Dated Los Angeles, California, April 25th, 1919.

A. J. HILL,
County Counsel;
CHARLES S. BURNELL,
Deputy County Counsel,
Attorneys for Plaintiff.'"

4130 That in the Alisos Canyon road case, No. B-59,443, the court, on January 30th, 1919, made and filed its findings of fact and conclusions of law in favor of the plaintiff and against the defendant, and ordered that judgment be entered accordingly, which findings of fact and conclusions of law are a part of the judgment roll in said case.

4131 That thereafter, to-wit: on February 5th, 1919, the court made and filed its so-called "Interlocutory Judgment of Condemnation" in said last-mentioned case, which was thereafter on February 11th, 1919, duly docketed and entered by the clerk of this court, and is a part of the judgment roll in said Alisos Canyon case.

"That thereafter, and on the 25th day of April, 1919, the plaintiff served and filed a notice of final order of condemnation in said Los Alisos Canyon case, which said notice of

4132 final order of condemnation was (except as to the title and the number of said case) in the exact words and figures as the notice of final order of condemnation filed in the main road case, and hereinabove set forth."

That thereafter and within the time allowed by law the defendant in said Alisos Canyon case served and filed its notice of intention to move for a new trial thereof, which said notice of
4133 intention was (except as to the title and the number of said case) in the exact words and figures and of the same date as the "Notice of Intention to Move for a New Trial" filed in the main road case and hereinabove set forth.

That thereafter, and within the time allowed by law, the defendant in said Alisos Canyon case, pursuant to its said notice of intention so to do, moved the court as therein stated, and upon each and all and every of the grounds
4134 therein stated; and thereafter, on April 3rd, 1919, the court in said Alisos Canyon road case made and caused to be entered the following order in the matter of said motion for a new trial, to-wit:

4135 "No. B-59,443.

"County of Los Angeles etc. vs. The Rindge Co. *et al.*

"The motion for a new trial heretofore heard and submitted.

"Defendant's motion for a new trial is denied."

To the making of the said order and to the said order and the whole thereof, the defendant
4136 in said Alisos Canyon case then and there duly excepted.

Exception No. 80.

"That thereafter, and on the 6th day of February, 1919, the plaintiff served and filed a notice of decision in the Los Alisos Canyon road case, which notice of decision was (except as to the title of and the number of said case) in the exact words and figures as the notice of
4137 decision filed in the main road case, and hereinabove set forth.

"That thereafter, and on the 4th day of April, 1919, the plaintiff served and filed a notice of election to fence in said Los Alisos Canyon case, which said notice of election to fence was (except as to the title and the number of said case) in the exact words and figures as the notice of election to fence filed in the main road case, and hereinabove set forth.'

That thereafter, to-wit, on April 18th, 1919, the court in said Alisos Canyon road case made a "Final Order of Condemnation" therein, which was thereafter duly docketed and entered by the clerk of this court, and which was and is in the words and figures following (omitting therefrom the descriptions of the property therein ordered condemned, such descriptions being the same in every particular as the descriptions in the complaint in said Alisos Canyon suit of the property sought to be condemned):

"(Title of Court and Cause.)

No. B-59443.

FINAL ORDER OF CONDEMNATION.

It appearing to the satisfaction of the court that the plaintiff in the above-entitled action has deposited with H. J. Lelande, county clerk of Los Angeles county and *ex-officio* clerk of the Superior Court of said county, for the defendant herein, as required by that certain interlocutory judgment of condemnation made and filed in the above-entitled cause on the 5th day of February, 1919, and recorded in book 431 of judgments, page 266, records of the clerk of the above-entitled court, as follows:

The sum of $3,016.25 for the defendant, Rindge Company, a corporation; and

It further appearing to the court that plaintiff, County of Los Angeles, on the 5th day of

April, 1919, filed with the clerk of the court 'Notice of Election to Fence' in words following, to-wit:

'To the Defendant, Rindge Company, a Corporation, and to Its Attorneys, Anderson & Anderson and Nathan Newby:

You and each of you will please take notice that the plaintiff, County of Los Angeles, hereby elects to build and construct 3.87 miles of 36 inch woven wire fence, with two barb wires above, with suitable posts, as specified by the verdict of the jury in the above-entitled action, which are the fences for which damages have been assessed in said action.

Dated Los Angeles, California, April 4th, 1919.

A. J. HILL,
County Counsel;
C. S. BURNELL,
Deputy County Counsel;
PAUL VALLEE,
Deputy County Counsel,
Attorneys for Plaintiff.'

Now, therefore, on motion of A. J. Hill, county counsel; Charles S. Burnell, deputy county counsel, and Paul Vallee, deputy county counsel, attorneys for plaintiff,

It is ordered, adjudged and decreed that the parcels of land hereinafter described be, and

4144 the same are hereby condemned for public highway purposes.

Said parcels of land so condemned for public highway purposes are more particularly described as follows:

"A strip of land 40 feet wide, being a portion of the Rancho Topanga Malibu Sequit, as shown on map recorded in book 1, page 414 *et seq.* of patents, records of Los Angeles county, said
4145 strip being bounded southerly by the northerly line of parcel No. 117, in division No. 7, of Malibu road, as shown on county surveyor's map No. 807(), on file in the office of the surveyor of Los Angeles county, and bounded northerly by the northerly line of said Rancho Topanga Malibu Sequit, said strip lying 20 feet on each side of the following described center line

(Description.)

Done in open court this 18th day of April,
4146 1919.

PAUL J. MCCORMICK,
Judge of the Superior Court."

That the said "Final Order of Condemnation" in the said Alisos Canyon road case was made *ex parte,* and without any notice whatever to the defendant in said case or to any of its attorneys; and to the said order and to the whole thereof, and to each and every part thereof the defendant in said case then and there excepted.

Exception No. 81.

4147 "That on the 21st day of April, 1919, the plaintiff served and filed a notice of motion for order authorizing plaintiff to take possession of property, which notice of motion was and is in the words and figures following, to-wit:

'(Title of Court and Cause.)

'NOTICE OF MOTION FOR ORDER AUTHORIZING PLAINTIFF TO TAKE POSSESSION OF PROPERTY.

4148 *'To the Defendant, Rindge Company, a Corporation, May K. Rindge and the Hueneme, Malibu & Southern Railway Company, a Corporation, and to Their Attorneys, Messrs. Anderson & Anderson and Nathan Newby:*

'You and each of you will please take notice that the plaintiff herein by its attorneys, A. J. Hill, county counsel, and Charles S. Burnell and
4149 Paul Vallee, deputies county counsel, will be and appear before the above entitled court, in Department 15 thereof, at the court room of said department in the county court house, county of Los Angeles, on Tuesday, the 6th day of May, 1919, at the hour of 10 o'clock in the forenoon of said day, and then and there, or as soon thereafter as counsel may be heard, will move the court for an order authorizing the plaintiff to take possession of and use the property described in the interlocutory judgment of con-

demnation in the above-entitled action during the pendency of and until the final conclusion of the litigation herein.

'Dated Los Angeles, California, April 21st, 1919.

A. J. HILL,
County Counsel;
CHARLES S. BURNELL,
Deputy County Counsel;
PAUL VALLEE,
Deputy County Counsel,
Attorneys for Plaintiff.'"

"That thereafter, on the 23rd day of May, 1919, the said motion for possession of said property, pursuant to said notice of motion last hereinabove set forth, came on regularly for hearing before said judge, and thereafter, on the 11th day of July, 1919, the said court made and rendered and filed its decision on said motion, which said decision is in words following, to-wit:

'(Title of Court and Cause.)

'The county of Los Angeles commenced proceedings against May K. Rindge, Rindge Company, a corporation, *et al.*, to condemn a strip and certain parcels of land through and across a portion of the Malibu Ranch in Los Angeles county, for highway purposes.

'Trial was had, judgment passed for the plaintiff, the damages for the value of the land to be taken and for the injury which would result to the remaining lands of defendants being assessed by a jury.

'Defendants regularly made a motion for a new trial, which was denied, and defendants have perfected their appeal to the Supreme Court from the decree of condemnation herein, which appeal is still pending.

'Plaintiff has deposited in this court the amount required to be paid the defendants, respectively, by the judgment herein and given notice that it would move for an order authorizing it to take possession, and use of the land described in the decree of condemnation herein as provided for in Sec. 1254 of the Code of Civil Procedure.

'The motion was regularly made and was thereafter submitted to the court for decision on briefs filed by counsel.

'The principal ground of opposition to the motion, indeed the only objection that has any merit, is that this court is without jurisdiction to grant the motion and make an order for possession herein because the proceedings in the court, wherein the judgment of condemnation and award of damage was made, were unauthorized by law, and therefore, without jurisdiction, it being their contention that the viewer method,

provided for in Sec. 2681 *et seq.*, Political Code, is the sole, exclusive and compulsory method and procedure for acquisition of rights of way by counties for public highway purposes.

'This contention has been passed on by both the District Court of Appeal of the Second District of California and by the Supreme Court of California in this case, and each of said courts has decided that this court had, and has, jurisdiction herein. (Rindge Company against the Superior Court etc., 28 Cal. App. Dec. and 57 Cal. Dec. 464.)

'Such being the case plaintiff has an unquestionable right, under Heilborn against Superior Court etc., 151 Cal. 271, to the possession of, and use of the land condemned, solely for the purpose of constructing the public highway over and across the same in the manner and according to the method as decreed in the final order of condemnation herein, and not otherwise.

'It is therefore ordered that said motion be granted as aforesaid upon the deposit by the plaintiff of the further sum of $7500.00 in the state treasury of California, to be held by the state treasurer as a fund to pay any further damages as may be sustained by defendants, if for any cause the property shall not finally be taken for public use as such public highway.

'The possession and use of said property is to be restricted and limited entirely to the lands

condemned for the sole and exclusive purpose of constructing said public highway as aforesaid, and said land or right of way is not to be used or traveled by the public until the same shall have been constructed and built as shown by the evidence in this proceeding, and as provided in the final order of condemnation herein.

'Counsel will present an order in accordance herewith and also evidence of the required deposit.'"

PAUL J. McCORMICK.

"'Dated this 11th day of July, 1919.'"

"And that thereafter and on the said 11th day of July, 1919, the said court, acting by and through the said judge in this suit, made and caused to be entered upon the minutes of said court the following order, to-wit:

(Title of Court and Cause.)

'No. B-43572.

Friday, July 11th, 1919.

'Present: Hon. Paul J. McCormick, judge.

'The motion for order authorizing the plaintiff to take possession of and use the property described heretofore heard and submitted.

'The decision of the court on motion for possession filed.

'The motion for possession herein will be granted in accordance with written decision thereon heretofore filed.

PAUL J. McCORMICK, J.'"

4162 "That thereafter and prior to the 28th day of July, 1919, the said County of Los Angeles, plaintiff in this suit, in pursuance to said order of July 23rd, 1919, deposited with the state treasury of the state of California the said further sum of $7500 as by said order directed to be deposited and for the purposes specified in said order.

"That thereafter the said court, acting by and
4163 through the said judge, and at the instance of the plaintiff in this suit, to-wit: on July 28, 1919, made and caused to be entered in said suit an order in the words and figures following, to-wit:

'(Title of Court and Cause.)

No. B-43572.

'ORDER AUTHORIZING PLAINTIFF TO TAKE IMMEDIATE POSSESSION AND USE OF PROP-
4164 ERTY.

" 'Whereas, the plaintiff herein filed its verified complaint in an action in eminent domain wherein said plaintiff sought to acquire a right of way for public use, to-wit: for public highway purposes; and

'Whereas, a trial has been had and judgment has passed for plaintiff, the damages for the value of the land to be taken and the damages caused to the lands of the defendants by reason

of the severance of such lands from the portion sought to be taken, having been assessed by a jury; and

'Whereas, an interlocutory judgment in condemnation was duly signed by the court and filed with the clerk of the court; and

'Whereas, the plaintiff has deposited in court the amount required to be paid to the defendants respectively by the judgment herein; and

'Whereas, a final order of condemnation duly signed by the court has been filed with the clerk of the court; and

'Whereas, the defendants regularly moved the court for a new trial, which was denied, and the defendants have perfected an appeal to the Supreme Court from the decree of condemnation herein, which appeal is still pending; and

'Whereas, plaintiff gave notice as required by law that it would move the court for an order authorizing it to take possession and use of the property described in the decree of condemnation herein; and

'Whereas, said motion regularly came on for hearing and was thereafter submitted to the court for a decision on briefs filed by counsel; and

'Whereas, the defendants objected to the hearing or granting of said motion of said court on the ground that said court was without jurisdiction to grant the motion and make the order

authorizing plaintiff to take possession of and use the property herein because said proceedings were unauthorized by law; and

'Whereas, the defendants petitioned the District Court of Appeal of the Second Appellate District of the state of California for a writ of prohibition to restrain and prohibit this court from proceeding to hear said motion on the ground that this court was without jurisdiction, which petition for a writ of prohibition was denied; and

'Whereas, the defendants petitioned the Supreme Court of the state of California for a writ of prohibition for the same reasons and on the same ground that the petition was made to the District Court of Appeal, which petition was denied; and

'Whereas, each of said courts has decided that this court had and has jurisdiction herein; and

'Whereas, this court has decided that said motion shall be granted upon the deposit by the plaintiff of the further sum of seventy-five hundred dollars ($7500) in the state treasury of the state of California to be held by the state treasurer as a fund to pay any further damages that may be sustained by the defendants if for any cause the property shall not be finally taken for public use as a public highway; and

'Whereas, said plaintiff, County of Los Angeles has deposited said further sum of seventy-

4171 five hundred dollars ($7500) in the state treasury of the state of California;

'Now, therefore, it is hereby ordered, adjudged and decreed that the plaintiff, county of Los Angeles, may take immediate possession and use of the right of way described in the final order of condemnation herein solely for the purpose of constructing a public highway over and across said right of way, in the manner and according to the method decreed in the final
4172 order of condemnation herein and not otherwise, during the pendency of and until the final conclusion of the litigation herein.

'And it is further ordered, adjudged and decreed that said right of way shall not be used or traveled by the public until a highway shall have been constructed and built thereon, as shown by the evidence in this proceeding and as provided in the final order of condemnation herein;

4173 'And it is further ordered, adjudged and decreed that all actions and proceedings against the plaintiff County of Los Angeles on account of this order authorizing it to take possession and use of said property be stayed during the pendency of and until the final conclusion of the litigation.

Done in open court this 28th day of July, 1919.

PAUL J. MCCORMICK,
Judge of Superior Court.'"

4174 SPECIFICATIONS OF PARTICULARS IN WHICH THE EVIDENCE IN THE MAIN ROAD CASE IS INSUFFICIENT TO JUSTIFY THE VERDICT OF THE JURY IN THAT CASE.

The evidence in the Main Road Case No. B-43572 is insufficient to justify the verdict of the jury in that case in the following particulars which are hereby specified by the defendants:

First—It is insufficient to justify the verdict
4175 of the jury that the amount of the severance damage to the remaining portion of defendant, May K. Rindge's, land not sought to be taken by reason of the severance therefrom of the part which is sought to be taken was $1162.36; and particularly in this that the evidence in said case showed that such severance damage would be approximately $30,000.00;

Second—It is insufficient to justify the verdict of the jury that it will be necessary to con-
4176 struct only 6.6 miles of fencing on the property of defendant, May K. Rindge, by reason of the taking and use for public highway purposes of the land sought to be taken by the defendant, May K. Rindge, and particularly in this that the evidence shows that the number of miles of fencing for said purpose was 9.14 miles;

Third—The evidence is insufficient to justify the verdict of the said jury that the kind of

4177 fencing that will be suitable to be constructed on the land of defendant, May K. Rindge, by reason of such taking and use of her land sought to be taken is 36 inch woven wire with two barbed wires above with suitable posts;

Fourth—The evidence is insufficient to justify the verdict of the jury that the cost of such fencing on the land of the defendant, May K. Rindge, will be $550.00 per mile, or total of $3630.00;

4178 Fifth—The evidence is insufficient to justify the verdict of the jury that the damage to the portion of the defendant, Rindge Company's, land not sought to be taken by reason of the severance therefrom of the part which is sought to be taken will be $3696.00, and particularly in this that the evidence shows that the said damage from said severance to the said Rindge Company's lands would be approximately the sum of $60,000.00;

4179 Sixth—The evidence is insufficient to justify the verdict of the jury that it will be necessary to construct on the property of the defendant, Rindge Company, by reason of the taking and use for public highway purposes of the land sought to be taken from the said defendant will be 29 miles only; and particularly in this that the evidence shows that the number of miles of fencing for said purpose which will be necessary is 33.22 miles;

4180 Seventh—The evidence is insufficient to justify the verdict of the jury that the kind of fencing that will be suitable to be constructed on the land of defendant, Rindge Company, by reason of such taking and use of its land sought to be taken is 36 inch woven wire with two barbed wires above with suitable posts;

Eighth—The evidence is insufficient to justify the verdict of the jury that the cost of such fencing on the land of defendant, Rindge Com-
4181 pany, will be $650.00 per mile—$18,859.

SPECIFICATIONS OF PARTICULARS IN WHICH THE EVIDENCE IN THE MAIN ROAD CASE IS INSUFFICIENT TO JUSTIFY THE DECISION OF THE COURT IN THAT CASE.

The defendants now specify the following particulars in which the evidence in the main road case is insufficient to justify the decision
4182 of the court in that case:

First—The evidence is insufficient to justify the decision that it is necessary for highway purposes to acquire an easement in and over the properties particularly described in paragraph II of the complaint for the construction, establishment and maintenance of a public highway as prayed in said complaint;

Second—The evidence is insufficient to justify the decision that the public interest requires the

4183 acquisition of an easement in and over the said properties for the said purpose;

Third—The evidence is insufficient to justify the decision that the public convenience requires the acquisition of such an easement for such purpose;

Fourth—The evidence is insufficient to justify the decision that the public necessity requires the acquisition of such an easement for such purpose;

4184

Fifth—The evidence is insufficient to justify the decision that the use to which the property sought to be taken is to be applied is a use authorized by law;

Sixth—The evidence is insufficient to justify the decision that it is necessary to acquire said easement over the said lands;

Seventh—The evidence is insufficient to justify the decision that the defendant, Hueneme,

4185 Malibu & Port Los Angeles Railway, a corporation, did not within two years after filing its original articles of incorporation, or at any other time, begin the construction of its road or any portion thereof;

Eighth—The evidence is insufficient to justify the decision that the defendant, Hueneme, Malibu & Southern Ry., a corporation, did not within one year after beginning the construction of its road, or ever, put in full or in any opera-

4186 tion at least five miles or any other portion of its road;

Ninth—The evidence is insufficient to justify the said decision wherein it is found and decided as follows: "nor have said corporations, or either of them, ever operated any railroad or railroads by the running thereover of any passenger, mixed or other trains for the carriage of the public or baggage or freight, or for any other public purpose whatsoever;

4187 Tenth—The evidence is insufficient to justify the decision that the public use to which said property is to be applied is a more necessary public use than that to which it has already or heretofore been appropriated;

Eleventh—The evidence is insufficient to justify the decision that the proposed public improvement is located by the taking of said lands in the manner which will be the most com-

4188 patible with the greatest public good and the least private injury;

Twelfth—The evidence is insufficient to justify the decision that the proposed public improvement is located by the taking of said lands in the manner which will be the most compatible with the greatest public good;

Thirteenth—The evidence is insufficient to justify the decision that the proposed public improvement is located by the taking of said

4189 lands in the manner which will be the most compatible with the least private injury;

Fourteenth—The evidence is insufficient to justify the decision that it is not true that there has been no consideration or determination of the board of supervisors of the county of Los Angeles of any of the matters or things alleged in said complaint and particularly of the matters or things alleged in paragraph II of said complaint;

4190 Fifteenth—The evidence is insufficient to justify the decision in either or any of the following particulars:

(a) "Nor is it true that the resolution referred to in paragraph II of said complaint was arbitrarily adopted by said board of supervisors without any consideration of the matters or things therein contained, or without the exercise of any discretion therein, or well knowing that

4191 there was no room for the exercise of any discretion therein, or that it was arbitrarily adopted, at all;"

(b) "Nor is it true that said resolution was adopted by said board of supervisors knowing full well or otherwise or at all that any of the property proposed to be taken for a public road or highway and to be condemned as in said resolution set forth and as in the complaint alleged was not and could not be necessary for any public use of any kind or character whatever."

4192 (c) "And cannot under any circumstances afford any accommodation of any kind or character to the traveling public, or any part or portion thereof."

Sixteenth—The evidence is insufficient to justify the decision that it is not true that said resolution was adopted by said board of supervisors knowing full well that the taking of the property proposed for said highway purposes would be without due process of law or in
4193 violation of the provisions of the Fourteenth Amendment to the Constitution of the United States;

Seventeenth—The evidence is insufficient to justify the decision that it is not true that said resolution was adopted by said board of supervisors knowing full well that the taking of said property under said resolution for public highway or other purposes would be void;

4194 Eighteenth—The evidence is insufficient to justify the decision that it is not true that said resolution was adopted by said board of supervisors knowing full well that the taking of said property under said resolution would be a denial to the defendants, or any or either of them, of the equal protection of the laws under the Constitution of the United States;

Nineteenth—The evidence is insufficient to justify the decision that it is not true that said resolution was adopted by said board of super-

4195 visors knowing full well that the taking of said property under said resolution would contravene the fourteenth or any amendment to the Constitution of the United States;

Twentieth—The evidence is insufficient to justify the decision "that the highway sought to be established and maintained over and upon the land sought to be taken and for the purpose of which the taking is sought, will afford accommodation to the traveling public;"

4196 Twenty-first—The evidence is insufficient to justify the decision found in paragraph I of the "conclusions of law;"

Twenty-second—The evidence is insufficient to justify the decision found in paragraph II of the "conclusions of law;"

Twenty-third—The evidence is insufficient to justify the decision found in paragraph III of the "conclusions of law;"

4197 Twenty-fourth—The evidence is insufficient to justify the decision found in paragraph IV of the "conclusions of law."

Twenty-fifth: The evidence is insufficient to justify the decision in said case that any highway whatever was or is sought to be established or maintained over any part of the land or lands sought to be taken in said case.

4198 SPECIFICATIONS OF PARTICULARS IN WHICH THE DECISION IN THE MAIN ROAD CASE IS AGAINST LAW.

The defendants now specify the following particulars in which the decision in the Main Road Case is against law.

First: Said decision is against law in this that the resolution of the board of supervisors set forth in the amended complaint was passed
4199 and adopted by the board of supervisors of the county of Los Angeles without any jurisdiction or authority so to do and was and is void.

Second: Said decision is against law in this, that the amended complaint herein upon which said decision was based fails to state facts sufficient to constitute a cause of action against these or either or any of these defendants, and that all proceedings taken thereunder are void.

Third: Said decision is against law in this,
4200 that the Superior Court of the county of Los Angeles, state of California, in which said decision in said action was made and given was and is without any jurisdiction whatever of the subject matter of said action and each and all and every of its acts therein were and are without jurisdiction and were and are void.

Fourth: Said decision is against law when and wherein it finds as a conclusion of law that it is necessary for highway purposes to acquire

an easement over the property described in paragraph II of the amended complaint in said action.

Fifth: Said decision is against law when and wherein it finds as a conclusion of law that the public interest, convenience and necessity or either require the acquisition of an easement over the property described in paragraph II of the amended complaint in said action for the construction, establishment and maintenance or either of a public highway.

Sixth: Said decision is against law when and wherein it finds and decides as found and decided in paragraph IV of the conclusions of law in said action.

Seventh: Said decision is against law when and wherein it finds and decides as is found and decided in paragraph II of the conclusions of law in said action.

Eighth: Said decision is against law when and wherein it finds and decides as is found and decided in paragraph III of the conclusions of law in said action.

Ninth: Said decision is against law when and where it finds and decides that it is necessary to take any part or portion of any property whatever of the defendants or of either or any of them for any highway purposes or for any purpose or purposes whatever.

Tenth: Said decision is against law when and wherein it finds and decides that the taking of said property by the plaintiff would not be a denial to the defendants of the equal protection of the laws under the Constitution of the United States;

Eleventh: That said decision is against law in this that it constitutes and is a denial to the defendants of the equal protection of the laws under the Constitution of the United States.

Twelfth: That said decision is against law in this that it contravenes the Fourteenth Amendment to the Constitution of the United States.

Thirteenth: That said decision is against law when and wherein it finds and decides that the taking of said property by the plaintiff does not contravene the Fourteenth Amendment to the Constitution of the United States.

SPECIFICATIONS OF PARTICULARS IN WHICH THE EVIDENCE IN THE ALISOS CANYON ROAD CASE IS INSUFFICIENT TO JUSTIFY THE VERDICT OF THE JURY IN THAT CASE.

First: It is insufficient to justify the verdict: "Will the remaining portion of defendant Rindge Company's land, not sought to be taken, be damaged by reason of the severance therefrom of the part which is sought to be taken? "Answer No."

4207 Second: It is insufficient to justify the verdict:

"If your answer to the last interrogatory was in the affirmative, what do you find the amount of such severance damage to be?

"Answer None."

Third: The evidence is insufficient to justify the verdict of the said jury in said case that the kind of fencing that will be suitable to be constructed on the land of the defendant, Rindge
4208 Company, by reason of such taking and use of its land sought to be taken is 36 inch woven wire with two barbed wires above with suitable posts.

Fourth: The evidence is insufficient to justify the verdict of said jury in said case that the cost of such fencing on the land of the defendant, Rindge Company, will be $675.00 per mile—total of $2612.25.

4209 SPECIFICATIONS OF PARTICULARS IN WHICH THE EVIDENCE IN THE ALISOS CANYON ROAD CASE IS INSUFFICIENT TO JUSTIFY THE DECISION OF THE COURT IN THAT CASE.

The defendant, Rindge Company, having thus specified the particulars in which the evidence in the Alisos Canyon Road Case is insufficient to justify the verdict of the jury in that case, now specifies the following particulars in which the evidence in the said Alisos Canyon Road Case

4210 is insufficient to justify the decision of the court in that case:

First: The evidence is insufficient to justify the decision in said case that the public interest and necessity require the construction of a public highway over the property described in paragraph II of the complaint.

Second: The evidence is insufficient to justify the decision in said case that "for the purpose of constructing a public highway, the
4211 acquisition of said property is necessary," viz.: the property described in paragraph II of the complaint.

Third: The evidence is insufficient to justify the decision in said case that "said public improvement is planned in the manner which will be most compatible with the greatest public good and the least private injury."

Fourth: The evidence is insufficient to justify
4212 the decision in said case that it is not true that there has been no consideration or determination of the board of supervisors of the county of Los Angeles of any of the matters or things alleged in the complaint in said case and particularly of the matters or things alleged in paragraph IV of said complaint.

Fifth: The evidence is insufficient to justify the decision in said case in either or any of the following particulars:

4213 (A) "Nor is it true that the resolution referred to in paragraph IV of the complaint was arbitrariiy adopted by said board of supervisors without any consideration of the matters or things therein contained, or without the exercise of any discretion therein, or well knowing that there was no room for the exercise of any discretion therein, or that it was arbitrarily adopted at all;"

(B) "Nor is it true that said resolution was
4214 adopted by said board of supervisors knowing full well or otherwise or at all that any of the property proposed to be taken for a public road or highway and to be condemned as in said resolution set forth and as in the complaint alleged was not and could not be necessary for any public use of any kind or character whatever,";

(C) "And cannot under any circumstances afford any accommodation of any kind or character to the traveling public."

4215 Sixth: The evidence is insufficient to justify the decision in said case that it is not true that said resolution was adopted by said board of supervisors knowing full well that the taking of the property proposed for said highway purposes would be without due process of law or in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

4216 Seventh: The evidence is insufficient to justify the decision in said case that it is not true that said resolution was adopted by the said board of supervisors knowing full well that the taking of said property under said resolution for public highway or other purposes would be void.

Eighth: The evidence is insufficient to justify the decision in said case that it is not true that said resolution was adopted by said board of
4217 supervisors knowing full well that the taking of said property under said resolution would be a denial to the defendant in said action of the equal protection of the laws under the Constitution of the United States.

Ninth: The evidence is insufficient to justify the decision in said case that it is not true that said resolution was adopted by said board of supervisors knowing full well that the taking of said property under said resolution would con-
4218 travene the fourteenth or any amendment to the Constitution of the United States.

Tenth: The evidence is insufficient to justify the decision in said case, "that the highway sought to be established and maintained over and upon the land sought to be taken and for the purpose of which the taking is sought will afford accommodation to the traveling public."

Eleventh: The evidence is insufficient to justify the decision in said case found in paragraph I of the conclusions of law in said case.

4219 Twelfth: The evidence is insufficient to justify the decision in said case found in paragraph II of the conclusions of law in said case.

Thirteenth: The evidence is insufficient to justify the decision in said case found in paragraph III of the conclusions of law in said case.

Fourteenth: The evidence is insufficient to justify the decision in said case that any highway whatever was or is sought to be established or maintained over or upon any part of the land
4220 sought to be taken in said case.

SPECIFICATIONS OF PARTICULARS IN WHICH THE DECISION IN THE ALISOS CANYON ROAD CASE IS AGAINST LAW.

The defendant Rindge Company now specifies the following particulars in which the decision in the Alisos Canyon Road Case is against law:

4221 First: Said decision is against law in this that the resolution of the board of supervisors pleaded and referred to in the complaint in said case was passed and adopted by the board of supervisors of the county of Los Angeles without any jurisdiction or authority so to do and was and is void.

Second: Said decision is against law in this, that the complaint in said case upon which said decision was based fails to state facts sufficient to constitute a cause of action against the de-

4222 fendant Rindge Company or for the taking of any private property for highway or other purposes.

Third: Said decision is against law in this, that the Superior Court of the county of Los Angeles, state of California, in and by which said decision in said action was made and given was and is without any jurisdiction whatever of the subject matter of said action, and each and all and every of its acts therein were and are
4223 without jurisdiction and were and are void.

Fourth: Said decision is without law when and wherein it finds as a conclusion of law that it is necessary for highway purposes to acquire an easement over any of the property described in paragraph II of the complaint in said action.

Fifth: Said decision is against law when and wherein it finds as a conclusion of law that the public interest, convenience or necessity or either
4224 require the acquisition of an easement over the property described in paragraph II of the complaint in said action for the construction, establishment and maintenance or either of a public highway:

Sixth: Said decision is against law when and wherein it finds and decides as is found and decided in paragraph II of the conclusions of law in said action.

Seventh: Said decision is against law when and wherein it finds and decides as is found and

decided in paragraph III of the conclusions of law in said action.

Eighth: Said decision is against law when and wherein it finds and decides that it is necessary to take any part or portion of any property whatever of the defendant Rindge Company for any highway purposes or for any purpose or purposes whatever.

Ninth: Said decision is against law when and wherein it finds and decides that the taking of said property by the plaintiff would not be a denial to the defendant Rindge Company of the equal protection of the laws under the Constitution of the United States.

Tenth: Said decision is against law in this that it constitutes and is a denial to the defendant Rindge Company of the equal protection of the laws under the Constitution of the United States.

Eleventh: That said decision is against law in this that it contravenes the Fourteenth Amendment to the Constitution of the United States.

Twelfth: Said decision is against law when and wherein it finds and decides that the taking of said property by the plaintiff does not contravene the Fourteenth Amendment to the Constitution of the United States.

The foregoing proposed bill of exceptions is hereby respectfully submitted this .... day of October, 1919.

ANDERSON & ANDERSON and
NATHAN NEWBY,
Attorneys for the Defendants.

Received copy of within this 24th day of Oct., 1919.

A. J. HILL,
County Counsel;
By PAUL VALLEE,
Deputy.

The foregoing bill of exceptions in the above-entitled actions is hereby settled and allowed as full, true and correct, this 29th day of March, 1920.

PAUL J. McCORMICK,
Judge.

Endorsed: Filed Mar. 29, 1920. L. E. Lampton, county clerk; by E. C. Polsue, deputy.

4231 **Clerk's Certificate.**

STATE OF CALIFORNIA, }
COUNTY OF LOS ANGELES, } ss.

I, L. E. Lampton, county clerk and *ex-officio* clerk of the Superior Court in and for said county, hereby certify that I have compared the foregoing transcript with the original papers in the above entitled action now on file in my office, and that the same contains full, true and correct
4232 copies of the judgment roll and the notice of appeal in case No. B 43572 and in case No. B 59443; stipulation as to various descriptions and the engrossed bill of exceptions in both cases, together with the endorsements on said papers and documents, as the same now appear on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said Superior Court, this .... day of June, 1920.

4233 (Seal) L. E. LAMPTON, *County Clerk.*

By ....., *Deputy.*

4234 [TITLE OF COURT AND CAUSE.]

Stipulation.

It is hereby stipulated and agreed by and between the respective counsel for plaintiff and defendants in the above-entitled action, that the foregoing printed transcript on appeal is correct and contains full, true and correct copies of the judgment roll and the notice of appeal in case No. B 43572 and in case No. B 59443; stipula-
4235 tion as to various descriptions and the engrossed bill of exceptions in both cases, together with the endorsements on said papers and documents, all of which papers and documents are a part of the files and records of the Superior Court.

Dated this .... day of June, 1920.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Defendants and Appellants.

4236

A. J. HILL,
County Counsel;
PAUL VALLEE,
Deputy County Counsel;
Attorneys for Plaintiff and Respondent.

Received copy of the within for the judge who tried the case, this 11th day of June, A. D. 1920.

L. E. LAMPTON, *County Clerk,*
By O. M. MCAULAY, JR., *Deputy.*

Due service of the within, and receipt of a copy thereof, is hereby admitted this 11 day of June, A. D. 1920.

A. J. HILL, *County Counsel;*
PAUL VALLEE, *Chief Deputy,*
Attorneys for Respondent.

Civil No. 3533 | Los Angeles County 3533

L. A. No. 6567 | 3533½

County of Los Angeles Plff. and Respdt v. Rindge Company (a corp.) et al., Defts. and Applts. 1920	A. J. Hill, County Counsel Paul Vallee, Deputy " " Anderson & Anderson Nathan Newby

May	7	Filed	Stipulation	
June	11	"	Transcript on Appeal	3 Vols.
"	30	"	Stipulation and Order	
August	13	"	do do	
"	27	"	Appellants' opening brief	
"	30	"	Stipulation and Order	
October	28	"	do " do	
December	3	"	Respondent's brief	
	13	"	Stipulation and order	

1921				
February	15	"	Appellants' reply brief	
	"	"	Exhibit	
March	7	Transferred from the Supreme Court		
			Division One Conrey, P. J.	
April	26	Cause submitted upon the briefs on file		
June	11	Judgments and Orders affirmed Shaw, J.		
August	11	Remittitur to county clerk		
October	5	Filed Petition for Writ of error to U. S. Supreme Court		}
	"	"	Assignment of errors and prayer for reversal	}
	"	"	Order allowing writ and fixing bond	}
	13	"	Undertaking for costs	
	"	"	Writ of Error	
"	5	"	Petition for writ of error to U. S. Supreme Court	}
"	"	"	Assignment of errors and prayer for reversal	} 3533½
	"	"	Order allowing writ and fixing bond	
	13	"	Undertaking for costs	
	"	"	Writ of error	

4243 In the District Court of Appeal, Second Appellate District, state of California, Division One.

Civil No. 3533.

Civil No. 3533½.

County of Los Angeles, plaintiff and respondent, vs. Rindge Company, a corporation, May K. Rindge, Hueneme, Malibu & Southern Railway, a Corporation, and Hueneme, Malibu &
4244 Port Los Angeles Railway, a corporation, defendants and appellants.

County of Los Angeles, plaintiff and respondent, vs. Rindge Company, a corporation, *et al.*, defendants and appellants.

Appeals from the Superior Court of Los Angeles county, Paul J. McCormick, judge.

For appellants — Anderson & Anderson, Nathan Newby.

For Respondent—A. J. Hill, county counsel;
4245 Paul Vallee, chief deputy county counsel.

The above-entitled actions were instituted by the county of Los Angeles to condemn certain lands described in the complaints therein for use as highways. In each case an interlocutory judgment as prayed for was rendered for the plaintiff, followed by a final order of condemnation, from which judgment and order so rendered in each case the defendants therein have appealed.

4246 In the first above entitled case, and which appellants designate the "Main Road" case, the action was to condemn a strip of land from a public highway at a point on the southeasterly boundary line of the Malibu ranch, and through said ranch for a distance of some twenty miles or more to the westerly boundary line of Ventura county, at which point the proposed road terminated upon private land. In the other action, No. 3533½, it was sought to condemn
4247 land for a lateral highway beginning at a point on the proposed "Main Road" and running thence easterly to the east boundary line of the Malibu ranch and terminating likewise upon private lands owned by one Decker, which highway appellants designate as the "Alisos Canyon Road." The questions involved in each case are the same and the grounds upon which appellants base their claim for a reversal are
4248 identical.

In both cases the proceedings were instituted by a resolution adopted *ex parte* and without a hearing accorded defendants by the board of supervisors of Los Angeles county. Omitting the description, the resolution initiating the proceeding as to the "Main Road" case (that adopted in the other being of like form and effect) is as follows:

"Whereas, the public necessity and interest of the people of the county of Los Angeles do

4249 require that a certain highway be constructed in said county over and across those certain parcels of real property hereinafter described, and for that purpose and for such public use it is necessary that those certain pieces or parcels of real property hereinafter described be acquired by said county by condemnation name-'y: the following described property located in the county of Los Angeles, state of California, to-wit:

4250 "(Description of forty-foot right of way strip, and also of some 146 side parcels.) * * * excepting so much of said land as is now included within any public highway, alley or lane.

"Further reference is hereby made to said county surveyor's map No. 8070, on which the location of all parcels of land herein described is accurately shown.

"Now, therefore, be it resolved, and it is the 4251 finding and determination of this board, that the public interest and necessity require the acquisition by the county of Los Angeles of those certain pieces or parcels of land hereinbefore described for a public purpose, namely: for public highway purposes, and for the construction and completion of a public highway thereover; and

"Be it further resolved, that those certain pieces or parcels of land hereinabove described be condemned for a public purpose, namely, for

a public highway and the construction and completion thereof, and the county counsel of the county of Los Angeles is hereby directed to institute proceedings in the Superior Court of the state of California in and for the county of Los Angeles for the condemnation of those certain pieces or parcels of real property hereinabove described for public highway purposes and to take all steps necessary for the condemnation of said pieces or parcels of land in the name of said county;".

in accordance with which the county counsel instituted the actions for the condemnation of the parcels of real estate described therein.

Demurrers interposed by the defendants to the complaints were overruled. Appellants insist that such rulings constituted fatal error for the reason that the powers conferred by law upon the board of supervisors to establish public highways are those *only* embodied in sections of the Political Code numbered 2681 to 2698, inclusive, which procedure therein prescribed is designated the "viewer" method and not infrequently adopted by counties in acquiring lands for highways; hence the resolutions of the board of supervisors authorizing the condemnation suits were not sufficient to confer jurisdiction upon the trial court, from which fact it follows that all proceedings had pursuant to such resolutions were void, including the commencement

of the actions and the judgments and orders appealed from. It is unnecessary to enter upon an extended discussion of appellants' voluminous brief and argument in support of this point. Suffice it to say the identical question, involved in the case of *Adamson v. County of Los Angeles,* reported in volume 34, California Appellate Decisions, page 888, was decided adversely to appellants by the District Court of Appeal for the First District, and a transfer of the case denied by the Supreme Court. In that action Adamson, as a taxpayer, set forth in his complaint the proceedings had and taken by the Board of Supervisors in the acquisition of the property in question, and, insisting the entire proceedings for condemning the same were unauthorized and void, sought to have the county enjoined from proceeding with construction work in the "Main Road" case. In deciding the case the court said: "The provisions of article VI of chapter 2 of title VI of the Political Code, comprising sections 2681 to 2698 thereof, do not purport to be exclusive, and may not be held to be so in view of the express grant of power embodied in subdivision 4 of section 2643 above quoted, and of the even more comprehensive enumeration of the general permanent powers of boards of supervisors contained in section 4041 of the Political Code by which such boards are expressly au-

thorized 'to acquire and take by purchase, *condemnation* or otherwise land for the uses and purposes of public roads, highways and so forth'." The contention of appellant in the Adamson case was identical with that here urged; the argument of appellant there was identical with the argument made in the instant cases; and the adverse decision of the court in that case must be deemed determinative of the same question presented in these appeals.

Another alleged erroneous ruling upon which appellants claim a reversal is that the court, upon defendants' motion for a new trial, denied it upon terms, the effect of which was an exercise by the court of the functions of the jury, by reason of which defendants were deprived of the constitutional right of having a vital element of damage determined by the jury. It appears that, among other things, the jury found it would require 29 miles of fencing to fence the Rindge Company's land along the roadway and that the cost per mile would be $650, aggregating the sum of $18,850. On motion for new trial one of the specifications of error was that the jury improperly determined the number of miles of fencing which would be required, and it being made to appear to the court that, instead of 29 miles, as found by the jury, it would require 31½ miles, the cost of which would be $1,625 more than that found by the

4261 jury, the court, as a condition of its order denying the motion for a new trial, made an order requiring that plaintiff consent to the increase in the judgment; whereupon counsel for plaintiff filed a written stipulation consenting to such increase in the amount of defendants' compensation, and thereupon the court made its order denying the motion for new trial. Upon the same contention, based upon the same facts
4262 and supported by the same argument made by the same attorneys, the court in the Adamson case, *supra*, held that in an action by a county for the condemnation of land for a public highway the county counsel, as attorney representing the county, has authority on a motion for a new trial to consent to an order increasing the amount of compensation awarded to the defendant by the verdict of the jury due to an error in computing the amount of required fenc-
4263 ing of defendant's land along the roadway.

In support of its case plaintiff offered in evidence the resolution, copy of which is hereinbefore set out, together with a minute entry of the board showing that it was adopted by a vote of more than two-thirds of the members thereof. Thereupon plaintiff rested and defendants moved for a nonsuit. The motion was denied, and the ruling is assigned as error.

Section 1241, Code of Civil Procedure, provides that before property can be taken by con-

demnation it must appear: "1. That the use to which it is to be applied is a use authorized by law; 2. That the taking is necessary to such use; provided, when the legislative body of a county * * * shall, by resolution or ordinance, adopted by vote of two-thirds of all its members, have found and determined that the public interest and necessity require the acquisition, * * * by such county * * * of any * * * public improvement, and that the property described in such resolution or ordinance is necessary therefor, such resolution or ordinance shall be conclusive evidence; (a) of the public necessity of such proposed * * * public improvement; (b) that such property is necessary therefor, and (c) that such proposed * * * public improvement is planned or located in the manner which will be most compatible with the greatest public good, and the least private injury."

Since the resolution declaring the land necessary for the proposed highway was adopted by a two-thirds vote of the members of the board of supervisors, it must, as provided by the statute, be accepted as conclusive evidence of the necessity for taking the property, unless, as claimed by appellants, that as so construed it is unconstitutional. This contention is based upon the claim that the determination of the facts so found by the resolution were in their nature

4267 judicial, and since the action of the board in adopting the resolution was had *ex parte* and without notice or hearing given to appellants, the effect of the judgment based thereon was to deprive them of their property without due process of law. That the purpose for which the property was sought to be condemned is a public use, admits of no question. (Sec. 1238, Code Civ. Proc.) When the use is public,
4268 the necessity of appropriating any particular property therefor is not a subject of judicial cognizance, but one which appertains to the legislative branch of the government, and the right to so appropriate may be exercised by the state or such subordinate bodies to which by legislative grant the power is entrusted. See Lewis on Eminent Domain (3rd ed.), Secs. 369, 595 and 596; Cooley on Constitutional Limitations, p. 777; *Secombe v. R. R. Co.*, 90 U. S. 108;
4269 *Miss. etc. Boom Co. v. Patterson*, 98 U. S. 403; *Water Works Co. v. Burkhart*, 41 Ind. 364; *Lamb v. Schottler*, 54 Cal. 319; *Wulzen v. Board of Supervisors*, 101 Cal. 15, and *People v. Smith*, 21 N. Y. 595; all of which are authorities in support of the proposition that, in the absence of constitutional provisions so requiring it—and there are none in this state—the Legislature may delegate to the boards of supervisors of the counties of the state the power to determine *ex parte* by resolution, as in the instant

4270 cases, the necessity for taking property for public use and make such resolution conclusive evidence of the facts enumerated in section 1241, Code of Civil Procedure. In Cooley's Constitutional Limitations, page 760, it is said that "a legislative act declaring the necessity, being the customary mode in which that fact is determined, must be held to be for this purpose 'the law of the land,' and no further finding or adjudication can be essential, unless the Con-
4271 stitution of the state has expressly required it." And at page 777 of the same work it is said that, while the question of necessity may be referred to a local tribunal or submitted to a jury to decide upon evidence, "the parties interested have no constitutional right to be heard upon the question, unless the state Constitution clearly and expressly recognizes and provides for it." *People v. Smith, supra,* is authority
4272 for the statement that the Legislature "may allow the owner to intervene and participate in the discussion before the officer or board to whom the power of determining whether the appropriation shall be made in a particular case, or it may provide that the officers shall act upon their own views of propriety and duty, without the aid of a forensic contest. The appropriation of the property is an act of public administration, and the form and manner of its performance is such as the Legislature shall, in its dis-

4273 cretion, prescribe." In the case of *Board of Water Commissioners v. Johnson,* 84 Atl. 727, the court said: "But the respondents urge that they have never had the opportunity to be heard upon the question of necessity, and that for that reason there has not been due process of law. They were not entitled to such opportunity. It is well settled that, as related to the exercise of the power of eminent domain, all questions which are political in their nature and
4274 lie within the legislative province may be determined without notice to the owner of the property affected, and * * * the owner is not entitled to a hearing upon it as a matter of right." In *Wulzen v. Board of Supervisors, supra,* it is said: "The determination as to whether or not the right of eminent domain should be exercised and as to what lands are necessary to be taken in the exercise of that
4275 right, is a political and legislative question and not a judicial one. Its determination rests exclusively with the Legislature, or with such subordinate legislative bodies as it may be properly devolved upon; and the question of whether the exercise of the power is wise or not is one with which the judicial department has no concern." Property is held in private ownership subject to the right of the state in its sovereign capacity to take it for public use; the only restriction upon such right being that it

"shall not be taken or damaged for public use without just compensation having first been made to, or paid into court for, the owner." (Sec. 14, art. I, Const.) Hence, where the owner of land sought to be condemned by the state for a use declared by law to be a public use is accorded his constitutional right to compensation for the taking he cannot question the procedure or instrumentalities which the Legislature has provided as a means for acquiring the property. Its motives or reasons for declaring that it is necessary to take the land are no concern of his. In our opinion, the provision of section 1241, Code of Civil Procedure, making the determination of the board of supervisors of the county conclusive evidence of the necessity for taking the land for a public highway, is not obnoxious to any provision of the State or Federal Constitution.

However, this may be, and contrary to the views herein expressed, the trial court agreed with defendants' contention that the resolution was not conclusive evidence of the facts so found, but did admit it as a sufficient *prima facie* showing of such facts, and upon this theory denied the motion for nonsuit. Thereupon and after the denial of their motion, defendants were given the widest latitude in offering a mass of evidence for the purpose of showing there was

4279 no necessity for the proposed highway, followed by plaintiff, which, in rebuttal, introduced a vast deal of evidence likewise touching the question of necessity for the improvement. Indeed, it appears from the voluminous record that no restrictions whatsoever were imposed upon either party in the introduction of evidence touching the question. Under these circumstances and assuming the court erred in accept-
4280 ing the resolution even as *prima facie* evidence, nevertheless we cannot perceive how defendants were prejudiced by the circumstance, since the testimony which, according to appellants' theory, should have been produced during plaintiff's presentation of its case in chief was later in the trial supplied. The error is predicated solely upon the order in which the evidence touching the question was admitted. "It is well settled that an order denying a motion for a
4281 non-suit will not be disturbed, although the evidence at the close of plaintiff's case was so weak that it might properly have been granted, if upon the trial the defect is overcome by evidence subsequently introduced." (*Peters v. Southern Pacific Co.*, 160 Cal. 48; *Lowe v. San Francisco etc. Ry. Co.*, 154 Cal. 573.) Since both parties were permitted, after the ruling upon the motion, to introduce evidence, without restriction, touching the question of necessity,

4282 defendants could in no event have been prejudiced by the ruling.

As a separate defense the defendants May K. Rindge and Rindge Company alleged that all of the property which plaintiff sought to condemn was within the boundaries of the Malibu ranch in Los Angeles county; that while the ranch was owned in severalty by May K. Rindge and the Rindge Company, it was, and had been for more than twenty years, with
4283 knowledge of plaintiff, operated as a single ranch under one management and control; that the westerly end of said proposed highway terminates at and upon the boundary line between Los Angeles county and Ventura county upon the Malibu ranch which, as owned by defendants, extends into Ventura county for a distance of —— miles, all of which is managed, operated and controlled by said defendants with the lands
4284 of said ranch so located in Los Angeles county; that there is no public road of any kind or character whatever within —— miles of the Ventura county end of said ranch, and the only means of egress and ingress to the westerly terminus of said proposed road is by private trails and ways; that said proposed road or highway, if condemned, would be located wholly and solely upon that part of the Malibu ranch situated in Los Angeles county and would end and terminate upon private property of the Rindge

4285 Company at the Ventura county line, and as constructed would give access wholly and solely to the private ranch property of defendants May K. Rindge and Rindge Company, and could not furnish any way of necessity or convenience to the general public; that the owners of said ranch have no need or desire for a public road thereon, which, if constructed, would be a constant menace and damage to their ranch property; by reason of which facts it is alleged the
4286 taking of said property for the purpose contemplated would be without necessity of any kind or right. Upon the grounds and for the reason that all of the matter so alleged as a separate defense was irrelevant, immaterial, surplusage and conclusions of law, plaintiff moved to strike the same from the answer. This motion was granted, and appellants assign the ruling as error. Counsel for appellants insist
4287 the special defense so pleaded was upon the theory that an isolated road within the boundaries of what is practically one property and not desired by the owners thereof and which could afford no real service to any part of the public as a road, could not possibly be a public necessity for which condemnation would lie. While this contention is fully answered by the fact that the resolution was conclusive evidence of the taking being necessary, nevertheless, conceding such theory warranted by the alleged

facts, it appears that every material issue tendered by the so-called separate defense was not only raised by the complaint and the answers thereto, but that in the trial thereof defendant, without objection or restriction, was accorded every opportunity, of which it availed itself, in offering evidence touching every matter contained in the pleading so stricken out by order of the court. There was no error in the ruling, but conceding as much, it is impossible to perceive how defendants, under the circumstances, could have suffered any prejudice by reason thereof.

It appears that while the eastern terminus of the main road connected with a public highway, the western terminus thereof was at the boundary line separating Los Angeles county from Ventura county, at which point it connected with no road extending into or connecting with roads in said last-named county, and that the Alisos Canyon road, likewise extending from the proposed main road to the boundary line common to the Malibu ranch and the lands of one Decker, was not connected with a highway; and basing their contention upon these facts, appellants insist that the board of supervisors had no power to lay out highways terminating at county lines or points on private lands which did not connect with or intersect other highways affording means of continuous travel.

4291 There is no merit in contention. No such restrictions upon the power of counties to establish highways are imposed by statute, and to hold that a county could not condemn lands for a highway to the line of another county unless there existed an established highway in such latter county with which to connect its proposed road would obviously lead to embarrassment and difficulty in establishing highways from one
4292 county to another. (*Rice v. Rindge*, 53 N. H. 530.)

The use for which the property was sought to be condemned is declared by section 1239, Code of Civil Procedure, to be a public use. The resolution adopted by a vote of two-thirds of the members of the board of supervisors not only vested the court with jurisdiction of the proceedings for condemnation, but when received in evidence the finding and determina-
4293 tion of the board as therein expressed, to the effect that the taking of the parcel of land described in the complaint was necessary for such public use and the proposed improvement located in the manner most compatible with the greatest public good and least private injury, was conclusive evidence of such facts; hence, while not prejudicial, any evidence touching such issue of necessity or hearings had before the board of supervisors other than the resolution, was immaterial. In no event, and from what-

4294 ever angle the facts are viewed, are we able to perceive how defendants' substantial rights were prejudiced by any ruling of the court during the trial.

The judgments and orders are affirmed.

SHAW, *J.*

We concur:

CONREY, *P. J.*

JAMES, *J.*

Endorsed: Original. State of California,
4295 District Court of Appeal, Second Appellate District. Filed Jun. 11, 1921. W. D. Shearer, clerk; by....., deputy.

In the Supreme Court of the state of California in bank.

County of Los Angeles, vs. Rindge Co. *et al.* 2 Civ. No. 3533-2. L. A. No. 6567.

Minutes of Supreme Court.

4296 *By the Court:*

The petition to have the above entitled cause heard and determined by this court after judgment in the District Court of Appeal of the Second Appellate District, Division One, is Denied.

Dated this 8th day of August, 1921.

(All concur except Angellotti C, J., & Wilbur, J., absent.)

I, B. Grant Taylor, clerk of the Supreme Court of the state of Califoria, do hereby cer-

4297 tify that the preceding is a true copy of an order of this court, as shown by the records of my office.

Witness my hand and the seal of the Court this 10th day ofAugust, A. D. 1921.

(Seal) B. GRANT TAYLOR, *Clerk.*
By ERB, *Deputy Clerk.*

In the District Court of Appeal of the state
4298 of California, Second Appellate District. Nos. 3533-3533½.

County of Los Angeles, Plff. and Respdt., vs. Rindge Company *et al.* (a corp.), Defts and Applts.

On Appeal From the Superior Court in and for the County of Los Angeles.

Remittitur.

And now, at this day, this cause being called,
4299 and having been heretofore submitted and taken under advisement, and all and singular the law and premises having been fully considered, the opinion of the court herein is delivered by

SHAW, *J.*

We concur:

CONREY, *P. J.*,

JAMES, *J.*

Whereupon, it is ordered, adjudged and decreed by the court that the judgments and orders of the Superior Court in and for the county of

4300 Los Angeles in the above entitled cause, be and the same are hereby affirmed. Respondents to recover costs on appeal.

I, W. D. Shearer, clerk of the District Court of Appeal of the state of California, in and for the Second Appellate District, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 11th day of June, 1921, and now
4301 remaining of record in my office.

Witness my hand and the seal of the Court affixed at my office, this 11th day of August, A. D. 1921.

(Seal) W. D. SHEARER, *Clerk.*

By .....*Deputy Clerk.*

Endorsed: No. In the District Court of Appeal, state of California, Second Appellate District. Remittitur. County of Los Angeles, vs. Rindge Company (a corp.) *et al.*

4302 Filed Aug. 13, 1921. L. E. Lampton, county clerk; by G. W. McDonald, deputy.

Docketed, Sep. 26, 1921; entered, Sep. 26, 1921; books, 431-471, pages 152-266 and 271;

B. B. Rheinstrom, deputy clerk.

4303 In the District Court of Appeal of the state of California, Second Appellate District, Division One.

County of Los Angeles, plaintiff and respondent, vs. Rindge Company (a corporation), May K. Rindge, *Huneme*, Malibu & Southern Railway (a corporation), and *Huneme*, Malibu & Port Los Angeles Railway (a corporation), defendants and appellants. Civil No. 3533.

4304 **Petition for Writ of Error.**

Considering themselves aggrieved by the final judgment and decree of the District Court of Appeal of the state of California, Second Appellate District, Division One, rendered against them in the above-entitled cause (a hearing in bank of said cause by the Supreme Court of the state of California having upon application therefor by them been denied, and said
4305 judgment and decree being that of the court of last resort in California), as will more fully appear from the assignment of errors exhibited herewith, the defendants and appellants in said cause, and each and all and every of said defendants and appellants, hereby pray that a writ of error may issue, and that they may be allowed to bring up for review before the Supreme Court of the United States the judgment and decree of said District Court of Appeal of the

4306 *the* state of California, Second Appellate District, Division One, in the above-entitled cause.

Dated: October 5th, 1921.

ANDERSON & ANDERSON,
NATHAN NEWBY and
GRANT JACKSON,
Attorneys for Defendants and Appellants.

Endorsed: Original No. 3533, state of California, District Court of Appeal, Second Appellate District.

4307 Filed Oct. 5, 1921. W. D. Shearer, clerk; by H. C. Lillie, deputy.

In the District Court of Appeal of the State of California, Second Appellate District, Division One.

County of Los Angeles, plaintiff and respondent, vs. Rindge Company (a corporation), May K. Rindge, *Huneme*, Malibu & Southern
4308 Railway (a corporation), and *Huneme*, Malibu & Port Los Angeles Railway (a corporation), defendants and appellants. Civil No. 3533.

Order Allowing Writ and Fixing Bond.

Upon reading the foregoing petition of the defendants and appellants in the above-entitled cause, it is ordered that a writ of error issue as therein prayed upon the execution by said defendants and appellants of a bond for costs

to the county of Los Angeles, plaintiff and respondent in said cause, in the sum of $1000.00.

Dated: October 5th, 1921.

N. P. CONREY,

Presiding Judge of the District Court of Appeal of the State of California, Second Appellate District, Division One.

Endorsed: Original No. 3533, state of California, District Court of Appeal, Second Appellate District.

Filed Oct. 5, 1921. W. D. Shearer, clerk; by H. C. Lillie, deputy.

In the Supreme Court of the United States.

Rindge Company, a Corporation; May K. Rindge, Hueneme, Malibu & Southern Railway, a corporation, and Hueneme, Malibu & Port Los Angeles Railway, a corporation, plaintiffs in error, vs. County of Los Angeles, defendants in error.

Assignment of Errors and Prayer for Reversal.

Now come the above-named plaintiffs in error in the above-entitled cause, and file herewith their petition for a writ of error and say there are errors in the records and proceedings in the above-entitled cause in the District Court of Appeal of the state of California, Second Appellate District, Division One, the court of

4312 last resort in said state in said cause, and for the purpose of having the same reviewed in the Supreme Court of the United States make the following assignment of errors:

I.

That the District Court of Appeal of the state of California, Second Appellate District, Division One, erred in holding against the contention of the plaintiffs in error that the tak-
4313 ing of the property involved in said suit for an alleged public road and highway and sought therein to be condemned for such purposes was necessary for a public use, and that it could under any circumstances afford any accommodation of any kind or character to the traveling public, or any part or portion of such traveling public, or that, therefore, the taking of the same for highway purposes would not be without due process of law and would not be in violation
4314 of the provisions of the Fourteenth Amendment to the Constitution of the United States, and that the taking of said property under the resolution in said suit for public highway or other purposes would not be void and would not be a denial to the plaintiffs in error of equal protection of the laws under the Constitution of the United States and would not contravene the Fourteenth Amendment to the said Constitution of the United States.

4315

II.

That the said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the ruling of the lower court in striking out the second, further and separate answer and defense of the defendant, May K. Rindge, in her amended answer in the above-entitled cause, which was and is in the words and figures
4316 following, to-wit:

"And for another and further and separate answer and defense this defendant alleges:

"I.

"That all of the properties described in paragraphs II and VI of the complaint and in any way involved in this action are entirely upon and within the boundaries of that certain ranch situate in the county of Los Angeles, state of California, commonly known as the Malibu
4317 Ranch.

"II.

"That while a portion of said Malibu Ranch is owned by the defendant, May K. Rindge, and the remaining portion thereof by the defendant Rindge Company, the said ranch as a whole is now, and was at the commencement of this action, and for more than twenty years prior thereto had been, treated, operated, managed and controlled as a single ranch under one joint management and control; and has

at no time ever been severed or segregated into parts or parcels or treated or handled or managed by the owners thereof as other than a single ranch and holding.

"III.

"That said method of holding, managing and controlling said ranch by its said two owners has at all times been known to the plaintiff and to the public in general.

"IV.

"That said Malibu Ranch as such and under that name and designation and as embraced in the original purchase of the same by the defendant, May K. Rindge, and the predecessor in interest of the defendant, Rindge Company, at the point where the proposed road sought to be condemned herein terminates at the westerly end of said road, ends at and upon the boundary line between the counties of Los Angeles and Ventura, state of California; but that the defendant, Rindge Company, is the owner and in the possession of, and was at the date of the commencement of this action, the owner and in the possession of property immediately adjacent thereto in the said county of Ventura, and forming a continuation into said county of Ventura for a distance of about 1¾ miles of the said ranch under the said joint management and control of the

said defendants, May K. Rindge and Rindge Company.

"V.

"That there was not at the commencement of this action and is not now in the said county of Ventura at any point either contiguous to or upon any part or portion of said property of the Rindge Company or within ten miles of the western, that is to say, the Ventura county, end of said ranch, any public road of any kind or character whatever; and that said ranch can be reached from said end only and wholly by private trails and ways.

"VI.

"That there was not at the commencement of this action, and is not now, any public road or way of any kind or character either upon that portion of said Malibu Ranch located in Los Angeles county or upon that extension of the same in Ventura county; and that the said proposed road or highway sought to be condemned and taken in this action would, if condemned and taken, be located wholly and solely upon that portion of the said Malibu Ranch situated in Los Angeles county, would end and terminate upon the private property of the defendant, Rindge Company, at the Ventura county line; would have no laterals or outlets or feeders of any kind or character; would be located wholly and solely upon, and

give access wholly and solely to, the private ranch property of the defendants, May K. Rindge and Rindge Company; and would not and could not furnish any way of necessity or convenience to the general public or for public use or travel.

"VII.

"That neither of said defendants, owners of and jointly managing and controlling said Malibu Ranch as a whole, has any need or desire for said or any public road upon said ranch or upon any part or portion thereof; but that, on the contrary, any such public road would be a constant and continuous menace and damage to their said ranch property, and would largely destroy its value as a unit for ranch purposes; and would be and constitute a continual nuisance and expense to the said defendants.

"VIII.

"That by reason of the premises the taking of any part or portion of said property as contemplated by the plaintiff and as prayed for in the complaint for road or highway purposes would be without necessity of any kind or right, and in contravention of the provisions of the Constitution of the United States, and particularly in violation of the Fourteenth Amendment to said Constitution, and would be void and without due process of law, and constitute a

denial to the defendants, May K. Rindge and the Rindge Company, of the equal protection of the laws under the Constitution of the United States, and would contravene the said Fourteenth Amendment to said Constitution."

III.

That the District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the ruling of the lower court in striking out the third separate answer and defense of the defendant, Rindge Company, in the above-entitled cause, which was and is in the words and figures following, to-wit:

"I.

"That all of the properties described in paragraphs II and VI of the complaint and in any way involved in this action are entirely upon and within the boundaries of that certain ranch situate in the county of Los Angeles, state of California, commonly known as the Malibu Ranch.

"II.

"That while a portion of said Malibu Ranch is owned by the defendant May K. Rindge, and the remaining portion thereof by the defendant Rindge Company, the said ranch as a whole is now, and was at the commencement of this action, and for more than twenty years prior thereto had been, treated, operated, managed and

controlled as a single ranch under one joint management and control; and has at no time ever been severed or segregated into parts or parcels or treated or handled or managed by the owners thereof as other than a single ranch and holding.

"III.

"That said method of holding, managing and controlling said ranch by its said two owners has at all times been known to the plaintiff and to the public in general.

"IV.

"That said Malibu Ranch as such and under that name and designation and as embraced in the original purchase of the same by the defendant May K. Rindge, and the predecessor in interest of the defendant Rindge Company, at the point where the proposed road sought to be condemned herein terminates at the westerly end of said road, ends at and upon the boundary line between the counties of Los Angeles and Ventura, state of California; but that the defendant Rindge Company is the owner and in the possession of, and was at the date of the commencement of this action, the owner and in the possession of property immediately adjacent thereto in the said county of Ventura, and forming a continuation into said county of Ventura for a distance of about 1¾ miles of the said ranch under the said

joint management and control of the said defendants, May K. Rindge and Rindge Company.

"V.

"That there was not at the commencement of this action and is not now in the said county of Ventura at any point either contiguous to or upon any part or portion of said property of the Rindge Company or within ten miles of the western, that is to say, the Ventura county, end of said ranch any public road of any kind or character whatever; and the said ranch can be reached from said end only and wholly by private trails and ways.

"VI.

"That there was not at the commencement of this action, and is not now, any public road or way of any kind or character either upon that portion of said Malibu Ranch located in Los Angeles county, or upon that extension of the said in Ventura county; and that the said proposed road or highway sought to be condemned and taken in this action would, if condemned and taken, be located wholly and solely upon that portion of said Malibu Ranch situated in Los Angeles county, would end and terminate upon the private property of the defendant Rindge Company at the Ventura county line; would have no laterals or outlets or feeders of any kind or character; would be

4336 located wholly and solely upon, and give access wholly and solely to, the private ranch property of the defendants May K. Rindge and Rindge Company; and would not and could not furnish any way of necessity or convenience to the general public or for public use or travel.

"VII.

"That neither of said defendants owners of and jointly managing and controlling said Malibu Ranch as a whole, has any need or
4337 desire for said or any public road upon said ranch or upon any part or portion thereof; but that, on the contrary, any such public road would be a constant and continuous menace and damage to their said ranch property, and would largely destroy its value as a unit for ranch purposes; and would be and constitute a continual nuisance and expense to the said defendants.

4338 "VIII.

"That by reason of the premises the taking of any part or portion of said property as contemplated by the plaintiff and as prayed for in the complaint for road or highway purposes would be without necessity of any kind or right, and in contravention of the provisions of the Constitution of the United States, and particularly in violation of the Fourteenth Amendment to said Constitution, and would be void and without due process of law, and constitute a

4339 denial to the defendants May K. Rindge and Rindge Company of the equal protection of the laws under the Constitution of the United States, and would contravene the said Fourteenth Amendment to said Constitution."

IV.

That the District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the ruling of
4340 the lower court against the said above-quoted third and separate answer and defense of the defendant Rindge Company in the above-entitled cause.

V.

That the District Court of Appeal of the state of California, Second Appellate District, Division One, erred in holding that the following provisions of Sec. 1241 of the Code of Civil Procedure of the state of California, in force
4341 at all times during the pendency of the proceedings involved in the above-entitled cause, to-wit:

"Provided, when the legislative body of a county, city and county, or an incorporated city or town, shall, by resolution or ordinance, adopted by vote of two-thirds of all its members, have found and determined that the public interest and necessity require the acquisition, construction or completion, by such county, city and county, or incorporated city or town,

of any proposed public utility, or any public improvement, and that the property described in such resolution or ordinance is necessary therefor, such resolution or ordinance shall be conclusive evidence; (a) of the public necessity of such proposed public utility or public improvement; (b) that such property is necessary therefor, and (c) that such proposed public utility or public improvement is planned or located in the manner which will be most compatible with the greatest public good, and the least private injury."

were and are constitutional, and were not in violation of the provisions of the Federal Constitution prohibiting the taking of property without due process of law, and were not violative of the Fourteenth Amendment to the Constitution of the United States, and were not obnoxious to any provision of the State or Federal Constitution, and in particular that portion thereof which prescribes that such resolution referred to in said Sec. 1241 of the said Code of Civil Procedure if passed by a vote of two-thirds of all of the members of any such legislative body shall be conclusive evidence of the various matters and things set forth and prescribed in said section as necessary to appear before property can be taken by condemnation.

VI.

Said District Court of Appeal of the state of California, Second Appellate District, Di-

4345 vision One, erred in holding and deciding that the county of Los Angeles was not permitted to and did not in and by the necessary force and effect of the judgment of the Superior Court in this cause deprive these plaintiffs in error of their property without due process of law contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

VII.

4346 Said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in holding and deciding that the county of Los Angeles, the defendant in error, was not permitted to and did not in and by the necessary force and effect of the judgment of the Superior Court in this cause deny to these plaintiffs in error the equal protection of the law contrary to the provisions of the
4347 Fourteenth Amendment to the Constitution of the United States.

VIII.

That the said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in holding and deciding that the property of these plaintiffs in error was not in and by the necessary force and effect of the judgment of the Superior Court of the state of California in said cause taken for public use without due process of law contrary

4348 to the provisions of the Constitution of the United States, and particularly to the provisions of the Fourteenth Amendment thereto.

IX.

That said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the following finding of fact by the lower court in the above-entitled cause:

4349 "That it is necessary for highway purposes, and the public interest, convenience and necessity require, the acquisition of an easement in and over the properties particularly described in paragraph II of the said complaint for the construction, establishment and maintenance of a public highway, as prayed in said complaint, and that the use to which the property sought to be taken is to be applied, is a use authorized by law."

4350 X.

That said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the following finding of fact by the lower court in the above-entitled cause:

"That it is not true that there has been no consideration or determination of the board of supervisors of the county of Los Angeles of any of the matters or things alleged in said complaint, and particularly of the matters or

things alleged in paragraph II of said complaint, nor is it true that the resolution referred to in paragraph II of said complaint was arbitrarily adopted by said board of supervisors, without any consideration of the matters or things therein contained, or without the exercise of any discretion therein, or well knowing that there was no room for the exercise of any discretion therein, or that it was arbitrarily adopted at all, nor is it true that said resolution was adopted by said board of supervisors knowing full well, or otherwise, that all, or that any of the property proposed to be taken for public road and highway, and to be condemned, as in said resolution set forth and as in the complaint alleged, was not, and could not be necessary for any public use of any kind or character whatever, and cannot, under any circumstances, afford any accommodation of any kind or character to the traveling public, or any part or portion thereof, and that the taking of same for said highway purposes would be without due process of law or in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, or that the taking of said property under said resolution for public highway or other purposes, would be void, or would be a denial to the defendants, or to any or either of them, of the equal protection of the laws under the Constitution of

4354 the United States, and would contravene the Fourteenth, or any amendment to said Constitution, and in this behalf the court finds that it is true that the property proposed to be taken for public road and highway, and sought to be condemned herein, is located wholly and solely upon and within the confines of private property, except that the easterly end of the strip of land sought to be taken terminates at, and will be in continuation of, a public high-
4355 way now, and prior to the commencement of this action, existing; and the court further finds that the highway sought to be established and maintained over and upon the land sought to be taken, and for the purpose of which the taking is sought, will afford accommodation to the traveling public."

XI.

That said District Court of Appeal of the
4356 state of California, Second Appellate District, Division One, erred in sustaining the following conclusion of law in the above-entitled cause:

"That it is necessary for highway purposes, and the public interest, convenience and necessity require, the acquisition of an easement in and over the property particularly described in the amended complaint in paragraph number II thereof, for the construction, establishment and maintenance of a public highway."

4357 XII.

That said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the following conclusion of law in the above-entitled cause.

"That the use to which the property sought to be taken is to be applied, is a use authorized by law."

XIII.

4358 That the property of the plaintiffs in error sought to be condemned in this action and included in the judgment of condemnation for alleged highway purposes consists of a strip of land forty feet in width running for a length of about twenty-one miles into and exclusively upon the real property in Los Angeles county, California, owned and operated in common by the Rindge Company, a corporation, and May K. Rindge, two of the above named petitioners, and
4359 one hundred and forty-nine additional parcels adjoining and contiguous to said forty-foot strip, and all upon and within the exterior boundaries of said lands of said petitioners, Rindge Company and May K. Rindge.

For the errors aforesaid these plaintiffs in error pray that the final judgment of the District Court of Appeal of the state of California, Second Appellate District, Division One, made and rendered in said cause on the 11th day of June, 1921, and which thereafter became

final on the 10th day of August, 1921, be reversed and a judgment rendered in favor of said plaintiffs in error, and for costs.

J. H. ANDERSON,
W. H. ANDERSON,
NATHAN NEWBY,
GRANT JACKSON,
Attorneys for Plaintiffs in Error.

Endorsed: Original No. 3533, Rindge Co., a corporation, *et al.*, plaintiffs in error vs. County of Los Angeles, defendants in error, state of California, District Court of Appeal, Second Appellate District.

Filed Oct. 5, 1921. W. D. Shearer, clerk; by H. C. Lillie, deputy.

Writ.

Civil No. 3533.

The President of the United States of America to the Honorable the Judges of the District Court of Appeal of the State of California Second Appellate District, Division One:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, being the highest court of law or equity of the said state in which (under the circumstances of this case) a decision could be had between the County of Los Angeles, as plaintiff, and Rindge Com-

4363 pany (a corporation), May K. Rindge, Hueneme Malibu & Southern Railway (a corporation), and Hueneme, Malibu & Port Los Angeles Railway (a corporation), as defendants, wherein was drawn in question the validity of a treaty of or a statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an 4364 authority exercised under said state, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said 4365 Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of said Rindge Company (a corporation), May K. Rindge, Hueneme, Malibu & Southern Railway (a corporation), and Hueneme, Malibu & Port Los Angeles Railway (a corporation), as by their complaint appears: We being willing that error, if any hath been done, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given,

4366 that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the Supreme Court at Washington, within 60 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right,
4367 and according to the laws and customs of the United States, should be done.

Witness the Honorable William H. Taft, chief justice of the United States, the 11th day of October, in the year of our Lord one thousand nine hundred a*dn* twenty-one.

(Seal) CHAS. N. WILLIAMS,

Clerk of the District Court of the United States, Southern District of California.

4368 Allowed, October 11th, 1921.

N. P. CONREY,

Presiding Justice of the District Court of Appeal of the State of California, Second Appellate District, Division One.

Endorsed: Original, Civil No. 3533, in the Supreme Court of the United States, County of Los Angeles, plaintiff, vs. Rindge Company *et al.*, defendants, state of California, District Court of Appeal, Second Appellate District.

4369 Filed Oct. 13, 1921. W. D. Shearer, clerk; by ————, deputy.

In the Supreme Court of the United States.

Rindge Company (a corporation), May K. Rindge, Hueneme, Malibu & Southern Railway (a corporation), and Hueneme, Malibu & Port Los Angeles Railway (a corporation), plaintiffs in error, vs., County of Los Angeles, defend-
4370 ant in error.

Undertaking for Costs on Petition for Writ of Error.

Know all men by these presents: That we, Rindge Company (a corporation), May K. Rindge, Hueneme, Malibu & Southern Railway (a corporation), and Hueneme, Malibu & Port Los Angeles Railway (a corporation), the plaintiffs in error in the above-entitled cause, as
4371 principals, and M. K. Rindge and R. R. Adamson, as sureties, are held and firmly bound unto the County of Los Angeles, California, the defendant in error in said cause, in the sum of one thousand ($1000.00) dollars, to be paid to said defendant in error, to which payment, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 7th day of Oct., 1921.

4372 Whereas, the above-named plaintiffs in error seek to prosecute their writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above mentioned cause by the District Court of Appeal of the state of California, Second Appellate District, Division One.

Now, therefore, the condition of this obligation is such that if the above-named plaintiffs in error shall prosecute said writ of error to
4373 effect and answer all costs and damages that may be adjudged, if they shall fail to make good their plea, then this obligation to be void, otherwise to remain in full force and effect.

This bond and undertaking is given and made on behalf of all of the plaintiffs in error above named, and is and shall be binding upon each and all of said plaintiffs in error and said sureties above named, jointly and severally, although
4374 these presents may not be executed by all of said plaintiffs in error.

RINDGE COMPANY,
By M. K. RINDGE,
President.

By R. R. ADAMSON,
Secretary.

(Seal)

HUENEME, MALIBU & SOUTHERN RAILWAY,
By M. K. RINDGE,
President,

By FREDERICK H. RINDGE,
Secretary.

(Seal)

4375 HUENEME, MALIBU & PORT LOS ANGELES RAILWAY,

By M. K. RINDGE,
President,
By F. B. SCOTTON,
Secretary.

M. K. RINDGE,
(Seal) R. R. ADAMSON,

State of California, County of Los Angeles—ss.

4376 M. K. Rindge and R. R. Adamson, the sureties whose names are subscribed to the foregoing undertaking, being severally duly sworn, each for himself says: That he is a resident and householder within the state of California, and is worth the sum for which he becomes surety on said undertaking, over and above all of his just debts and liabilities, exclusive of property exempt from execution.

4377 M. K. RINDGE,
R. R. ADAMSON.

Subscribed and sworn to before me this 10th day of October, 1921.

(Seal) LOUISE WULFF,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires December 10, 1923.

Approved as to form:
A. J. HILL,
County Counsel of the County of Los Angeles, Calif.,

4378 PAUL VALLEE,
Deputy County Counsel of Said County,
Attorneys for Defendant in Error.

Dated: Oct. 10, 1921.

Bond approved: Dated Oct. 11, 1921.

N. P. CONREY,
Presiding Justice of the District Court of Appeal of the State of California, Second Appellate District, Division One.

Endorsed: Original, in the Supreme Court
4379 of the United States, Rindge Company, a corporation *et al.*, plaintiffs in error, vs. County of Los Angeles, defendant in error, state of California, District Court of Appeal, Second Appellate District.

Filed Oct. 13, 1921. By W. D. Shearer, clerk; by ————, deputy.

Citation.

4380 *The President of the United States of America to the County of Los Angeles, California, Greeting:*

You are hereby cited and admonished to appear at and before the Supreme Court of the United States, at Washington, D. C., within sixty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the District Court of Appeal of the state of California, Second Appellate District, Division One, wherein Rindge Company (a cor-

poration), May K. Rindge, Hueneme, Malibu & Southern Railway (a corporation), and Hueneme, Malibu & Port Los Angeles Railway (a corporation), are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the presiding justice of the District Court of Appeal of the state of California, Second Appellate District, Division One, this 11 day of October, 1921.

N. P. CONREY,

Presiding Justice of the District Court of Appeal of the State of California, Second Appellate District, Division One.

We, attorneys of record for the defendant in error in the foregoing entitled cause, hereby acknowledge receipt of a copy of the foregoing citation, and enter appearance in the Supreme Court of the United States, October 13th, 1921.

A. J. HILL,

County Counsel of the County of Los Angeles, State of California, and

PAUL VALLEE,

Chief Deputy County Counsel of Said County,

Attorneys for the County of Los Angeles, California, Defendant in Error.

4384 Endorsed: Original, 3533, in the Supreme Court of the United States, Rindge Company, a corporation, plaintiff in error, vs. County of Los Angeles, defendant in error, state of California, District Court of Appeal, Second Appellate District.

Filed Oct. 13, 1921. W. D. Shearer, clerk; by————, deputy.

4385 In the District Court of Appeal of the state of California, Second Appellate District, Division One.

County of Los Angeles, plaintiff and respondent, vs. Rindge Company (a corporation), defendant and appellant. Civil No. 3533-1/2.

Petition for Writ of Error.

Considering itself aggrieved by the final judgment and decree of the District Court of Appeal
4386 of the state of California, Second Appellate District, Division One, rendered against it in the above-entitled cause (a hearing in bank of said cause by the Supreme Court of the state of California having upon application therefor by it been denied, and said judgment and decree being that of the court of last resort in California), as will more fully appear from the assignment of errors exhibited herewith, the defendant and appellant in said cause hereby prays that a writ of error may issue, and that

4387 it may be allowed to bring up for review before the Supreme Court of the United States the judgment and decree of said District Court of Appeal of the state of California, Second Appellate District, Division One, in the above-entitled cause.

Dated October 5th, 1921.

ANDERSON & ANDERSON,
NATHAN NEWBY,
4388 GRANT JACKSON,
Attorneys for Defendant and Appellant.

Endorsed: Original, Civil No. 3533½. State of California, District Court of Appeal, Second Appellate District.

Filed Oct. 5, 1921. W. D. Shearer, clerk; by H. C. Lillie, deputy.

In the District Court of Appeal of the state of California, Second Appellate District, Di-
4389 vision One.

County of Los Angeles, plaintiff and respondent, vs. Rindge Company (a corporation), defendant and appellant. Civil No. 3533-1/2.

Order Allowing Writ and Fixing Bond.

Upon reading the foregoing petition of the defendant and appellant in the above-entitled cause, it is ordered that a writ of error issue as therein prayed upon the execution by said defendant and appellant of a bond for costs to

4390 the county of Los Angeles, plaintiff and respondent in said cause, in the sum of $1000.00.

Dated October 5th, 1921.

N. P. CONREY,

Presiding Judge of the District Court of Appeal of the State of California, Second Appellate District, Division One.

Endorsed: Original, No. 3533½, state of California, District Court of Appeal, Second Appellate District.

4391 Filed Oct. 5, 1921. W. D. Shearer, clerk; by H. C. Lillie, deputy.

In the Supreme Court of the United States.

Rindge Company, a corporation, plaintiff in error, vs. County of Los Angeles, defendant in error.

Assignment in Error and Prayer for Reversal.

4392 Now comes the above-named plaintiff in error in the above-entitled cause, and files herewith its petition for a writ of error and says there are errors in the records and proceedings in the above-entitled cause in the District Court of Appeal of the state of California, Second Appellate District, Division One, the court of last resort in said state in said cause, and for the purpose of having the same reviewed in the Supreme Court of the United States makes the following assignment of errors:

4393 I.

That said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the finding in the above-entitled cause that the following allegation of paragraph II of the complaint in said cause was true, to-wit:

"That the public interest and necessity require the construction of a public highway over
4394 the property hereinafter described," namely: the property described in said complaint and condemned in said action.

II.

That the said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the finding in the above-entitled cause that the following allegation of paragraph II of the complaint in said cause was true, to-wit:

4395 "That for the purpose of constructing a public highway the acquisition of said property is necessary, namely: that certain parcel of land situate in the county of Los Angeles, and described as being," describing the property condemned in said action.

III.

That said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the follow-

ing finding of the trial court in the above-entitled cause, to-wit:

"That it is not true that there has been no consideration or determination by the board of supervisors of the county of Los Angeles of any of the matters or things alleged in said complaint and particularly of the matters or things alleged in paragraph IV of said complaint, nor is it true that the resolution referred to in paragraph IV of said complaint was arbitrarily adopted by said board of supervisors, without any consideration of the matters or things therein contained, or without the exercise of any discretion therein, or well knowing that there was no room for the exercise of any discretion therein, or that it was arbitrarily adopted at all, nor is it true that said resolution was adopted by said board of supervisors knowing full well, or otherwise, or at all, that any of the property proposed to be taken for a public road and highway, and to be condemned, as in said resolution set forth and as in complaint alleged, was not, and could not be necessary for any public use of any kind or character whatever, and cannot, under any circumstances, afford any accommodation of any kind or character to the traveling public, or any part or portion thereof, and that the taking of same for said highway purposes would be without due process of law or in violation of the pro-

visions of the Fourteenth amendment to the Constitution of the United States, or that the taking of said property under said resolution for public highway or other purposes, would be void, or would be a denial to the defendant, of the equal protection of the laws under the Constitution of the United States, and would contravene the Fourteenth, or any amendment to said Constitution, and in this behalf the court finds: that it is true that the property proposed to be taken for a public road and highway, and sought to be condemned herein, is located wholly and solely upon and within the confines of private property, except that the southerly end of the strip of land sought to be taken terminates at, and will connect with, another strip of land sought to be acquired by the plaintiff in another action (which other action was tried at the same time as, and with this action, and before the same court and jury) brought for the purpose of condemning said last mentioned strip of land for public highway purposes, and the court further finds that the highways sought to be established and maintained over and upon the land sought in this action to be taken and for the purpose of which the taking is sought, will afford accommodation to the traveling public."

4402 IV.

That said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the following conclusion of law in the above-entitled cause, to-wit:

"That it is necessary for highway purposes, and the public interest, convenience and necessity require, the acquisition of an easement in and over the property particularly described in
4403 the amended complaint in paragraph number II thereof, for the construction, establishment and maintenance of a public highway."

V.

That said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the following conclusion of law in the above-entitled cause, to-wit:

4404 "That the use to which the property sought to be taken is to be applied, is a use authorized by law."

VI.

That the District Court of Appeal of the state of California, Second Appellate District, Division One, erred in holding that the following provisions of Sec. 1241 of the Code of Civil Procedure of the state of California, in force at all times during the pendency of the proceedings involved in the above-entitled cause, to-wit:

"Provided, when the legislative body of a county, city and county, or an incorporated city or town, shall by resolution or ordinance, adopted by vote of two-thirds of all its members have found and determined that the public interests and necessity require the acquisition, construction or completion, by such county, city and county, or incorporated city or town, of any proposed public utility, or any public improvement, and that the property described in such resolution or ordinance is necessary therefor, such resolution or ordinance shall be conclusive evidence; (a) of the public necessity of such proposed public utility or public improvement; (b) that such property is necessary therefor, and (c) that such proposed public utility or public improvement is planned or located in the manner which will be most compatible with the greatest public good, and the least private injury," were and are constitutional, and were not in violation of the provisions of the Federal Constitution prohibiting the taking of property without due process of law, and were not violative of the Fourteenth Amendment to the Constitution of the United States, and were not obnoxious to any provision of the State or Federal Constitution, and in particular that portion thereof which prescribes that such resolution referred to in said Sec. 1241 of the said Code of Civil Procedure if passed by a vote

of two-thirds of all of the members of such a legislative body shall be conclusive evidence of the various matters and things set forth and prescribed in said section as necessary to appear before property can be taken by condemnation.

VII.

Said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in holding and deciding that the county of Los Angeles was not permitted to and did not in and by the necessary force and effect of the judgment of the Superior Court in this cause deprive these plaintiffs in error of their property without due process of law contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

VIII.

Said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in holding and deciding that the county of Los Angeles, the defendant in error, was not permitted to and did not in and by the necessary force and effect of the judgment of the Superior Court in this cause deny to these plaintiffs in error the equal protection of the law contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

4411 IX.

That the said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in holding and deciding that the property of these plaintiffs in error was not in and by the necessary force and effect of the judgment of the Superior Court of the state of California in said cause taken for public use without due process of law contrary to
4412 the provisions of the Constitution of the United States, and particularly to the provisions of the Fourteenth Amendment thereto.

For the errors aforesaid the plaintiff in error prays that the final judgment of the District Court of Appeal of the state of California, Second Appellate District, Division One, made and rendered in said cause on the 11th day of June, 1921, and which thereafter became final on the 10th day of August, 1921, be reversed and a
4413 judgment rendered in favor of said plaintiff in error, and for costs.

J. A. ANDERSON,
W. H. ANDERSON,
NATHAN NEWBY,
GRANT JACKSON,
Attorneys for Plaintiff in Error.

Endorsed: Original, 3533[1/] in the Supreme Court of the United States, Rindge Company, a corporation, plaintiff in error, vs. County of Los Angeles, defendant in error, state of Cali-

4414 fornia, District Court of Appeal, Second Appellate District.

Filed Oct. 5, 1921. W. D. Shearer, clerk; by H. C. Lillie, deputy.

Writ of Error.

Civil No. 3533-1/2.

The President of the United States of America to the Honorable the Judges of the

4415 *District Court of Appeal of the State of California, Second Appellate District, Division One:*

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, being the highest court of law or equity of the said state in which (under the circumstances of this case) a decision could be had between the

4416 County of Los Angeles, as plaintiff, and Rindge Company (a corporation), as defendant, wherein was drawn in question the validity of a treaty of or a statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said state, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their

validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission; a manifest error hath happened, to the great damage of said Rindge Company (a corporation), as by its complaint appears: We being willing that error, if any hath been done, should be corrected, and full and speedy justice be done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings of aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the Supreme Court at Washington, within 60 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William H. Taft, chief justice of the United States, the 11th day

of October, in the year of our Lord one thousand nine hundred and twenty-one.

(Seal) CHAS. N. WILLIAMS,
Clerk of the District Court of the United States, Southern District of California.

Allowed, October 11th, 1921.

N. P. CONREY,
Presiding Justice of the District Court of Appeal of the State of California, Second Appellate District, Division One.

Endorsed: Original. Civil No. 3533½. In the Supreme Court of the United States, County of Los Angeles, plaintiff, vs. Rindge Company, a corporation, defendant. State of California, District Court of Appeal, Second Appellate District.

Filed Oct. 13, 1921. W. D. Shearer, clerk; by ....., deputy.

In the Supreme Court of the United States.

Rindge Company (a corporation), plaintiff in error, vs. County of Los Angeles, defendant in error.

Undertaking for Costs on Petition for Writ of Error.

Know all men by these presents, that we, Rindge Company (a corporation), the plaintiff in error in the above-entitled cause, as principal, and M. K. Rindge and R. R. Adamson, as sureties, are held and firmly bound unto the county of Los Angeles, California, the defend-

4423 ant in error in said cause, in the sum of one thousand dollars ($1000.00) dollars, to be paid to said defendant in error, to which payment, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 7th day of Oct., 1921.

Whereas, the above-named plaintiff in error seeks to prosecute its writ of error to the Supreme Court of the United States to reverse
4424 the judgment rendered in the above-mentioned cause by the District Court of Appeal of the state of California, Second Appellate District, Division One.

Now, therefore, the condition of this obligation is such that if the above-named plaintiff in error shall prosecute said writ of error to effect and answer all costs and damages that may be adjudged, if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and effect.

4425 This bond and undertaking is given and made on behalf of the plaintiff in error above named, and is and shall be binding upon said plaintiff in error and said sureties above-named, jointly and severally.

RINDGE COMPANY,
By M. K. RINDGE,
President.
By R. R. ADAMSON,
(Seal) *Secretary.*
M. K. RINDGE,
R. R. ADAMSON.

4426 State of California, County of Los Angeles—ss.

M. K. Rindge and R. R. Adamson, the sureties whose names are subscribed to the foregoing undertaking, being severally duly sworn, each for himself says: That he is a resident and householder within the state of California, and is worth the sum for which he becomes surety on said undertaking, over and above all of his just debts and liabilities, exclusive of property exempt from execution.

4427 M. K. RINDGE,
R. R. ADAMSON.

Subscribed and sworn to before me, this 7th day of October, 1921.

(Seal) LOUISE WULFF,
Notary Public in and for the County of Los Angeles, State of California.

Approved as to form:

A. J. HILL,
County Counsel of the County of Los Angeles,
4428 *California.*

PAUL VALLEE,
Deputy County Counsel of Said County,
Attorneys for Defendant in Error.

Dated Oct. 10, 1921.

Bond approved:
Dated Oct. 11, 1921.

N. P. CONREY,
Presiding Justice of the District Court of Appeal of the State of California, Second Appellate District, Division One.

4429 Endorsed: Original. In the Supreme Court of the United States. Rindge Company, a corporation, plaintiff in error, vs. County of Los Angeles, defendant in error. State of California, District Court of Appeal, Second Appellate District.

Filed Oct. 13, 1921. W. D. Shearer, clerk; by ....., deputy.

4430 **Citation.**

The President of the United States of America to the County of Los Angeles, California, Greeting:

You are hereby cited and admonished to appear at and before the Supreme Court of the United States, at Washington, D. C., within sixty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of
4431 the District Court of Appeal, of the state of California, Second Appellate District, Division One, wherein Rindge Company (a corporation), is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the party in that behalf.

Witness the presiding justice of the District Court of Appeal, of the state of California, Second Appellate District, Division One, this 11 day of October, 1921.

N. P. CONREY,

Presiding Justice of the District Court of Appeal of the State of California, Second Appellate District, Division One.

We, attorneys of record for the defendant in error in the foregoing entitled cause, hereby acknowledge receipt of a copy of the foregoing citation, and enter appearance in the Supreme Court of the United States, October 13th, 1921.

A. J. HILL,

County Counsel of the County of Los Angeles, State of California, and

PAUL VALLEE,

Chief Deputy County Counsel of Said County, Attorneys for the County of Los Angeles, California, Defendant in Error.

Endorsed: Original. 3533½. In the Supreme Court of the United States. Rindge Company, a corporation, *et al.*, plaintiffs in error vs. County of Los Angeles, defendant in error. State of California, District Court of Appeal, Second Appellate District.

Filed Oct. 13, 1921. W. D. Shearer, clerk; by ....., deputy.

4435 Civil Nos. 3533-3533½.

In the District Court of Appeal, state of California, Second Appellate District, Division One.

I, W. D. Shearer, clerk of the above entitled court, do hereby certify that the foregoing documents, to wit: Transcript on appeal, register of actions, opinion of the court, order of Supreme Court denying petition for rehearing, remittitur, petition for writ of error, order allow-
4436 ing writ and fixing bond, assignment of errors and prayer for reversal, writ of error, undertaking for costs on petition for writ of error, citation, constitute a full and complete transcript of the record and proceedings in the case of County of Los Angeles vs. Rindge Company, a corporation, *et al.*, as the same now appear on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my
4437 office in Los Angeles, California, this.....day of December, A. D. 1921.

Clerk of the District Court of Appeal, State of California, Second Appellate District, Division One.

4438 In the Supreme Court of the United States, October Term, 1921.

Rindge Company, a Corporation, May K. Rindge, Hueneme, Malibu & Southern Railway, a Corporation, and Hueneme, Malibu & Port Los Angeles Railway, a Corporation, plaintiffs in error, vs. County of Los Angeles, defendant in error.

Rindge Company (a Corporation), plaintiff in error, vs. County of Los Angeles, defendant in error.

Stipulation That but One Record Upon Writs
4439 **of Error in the Above Entitled Causes Need Be Printed and Filed, and That Said Causes May Be Heard and Decided Together on Said Record.**

It is hereby stipulated and agreed by and between the respective counsel for the parties in the above-entitled causes, subject to the approval of the court, that upon the writs of error heretofore issued in said causes one record only need be printed and filed, and that the said causes upon said writs of error may be heard and decided together by the above-entitled court and
4440 may be determined upon the said record so printed in said causes.

Dated November 3, 1921.

_____

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_____

_____

Attorneys for Plaintiffs in Error.

_____

County Counsel,

_____

Chief Deputy County Counsel,
Attorneys for Defendants in Error.

4441 In the Supreme Court of the United States.
October Term, 1921.

Rindge Company, a corporation, *et al.*, plaintiffs in error, vs. County of Los Angeles, defendant in error. Civil No. 3533.

Rindge Company, a corporation, plaintiff in error, vs. County of Los Angeles, defendant in error. Civil No. 3533½.

Stipulation.

4442 It is hereby stipulated by and between the parties to the above-entitled actions that the time for filing the transcript or other record on appeal in each of said actions may be, and is, hereby extended to and including the 1st day of January, 1922.

Dated this 3d day of December, 1921.

_____

4443 _____

_____

Attorneys for Plaintiffs in Error.

_____

County Counsel,

_____

Chief Deputy;
Attorneys for Defendant in Error.

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

No. 668.

Rindge Company, a Corporation; May K. Rindge, Hueneme, Malibu & Southern Railway, a Corporation, and Hueneme, Malibu & Port Los Angeles Railway, a Corporation,
Plaintiffs in Error.

vs.

County of Los Angeles,
Defendant in Error.

Rindge Company (a corporation),
Plaintiff in Error,

vs.

County of Los Angeles,
Defendant in Error.

APPELLANTS' OPENING BRIEF.

The transcript in this case embraces two separate appeals, involving two separate condemnation actions numbered B 43572 and B 59443, respectively [Tr. fols. 1-119 and 553-571] which by stipulation of the parties and

order of court were tried at the same time, though not consolidated. [Tr. fol. 642.] The other case No. 65893, referred to in the stipulation, was decided in favor of the defendants and need not be further considered.

In the transcript and in the opinion of the District Court of Appeal, Second Appellate District, Division One, Action No. B 43572 is referred to as the "Main Road" case, and No. B 59443 as the "Alisos Canyon Road" case, and for the sake of conformity and clearness, we will adopt the same terminology in this brief. It was stipulated that all descriptions of the property sought to be condemned might be omitted in the printed transcript [Tr. fol. 633] and that only one bill of exceptions should be prepared and settled for both appeals. [Tr. fol. 638.] It was also stipulated that only one record need be printed and filed for hearing of the writs of error in said actions. [Tr. fol. 4439.]

On motion of the defendant in error, the trial court struck out from the amended answer of May K. Rindge the special defense which, in substance, alleged that the proposed roads were located entirely upon private property, were not a public necessity, and that the condemnation would be for private purposes and in contravention of the provisions of the Constitution of the United States, and particu-

larly in violation of the Fourteenth Amendment to said Constitution, and would be void and without due process of law, and constitute a denial to the defendants of the equal protection of the laws. [Tr. fols. 303-315.] The same defense was alleged in the amended answer of the Rindge Company and stricken out by the trial court, all of which was affirmed by the Appellate Court. In support of its case (No. B 43572), the defendant in error offered in evidence the resolution appearing in the complaint [Tr. fols. 9-48] in the Main Road case; and a similar resolution in the Alisos Canyon road case was introduced in evidence, identical in form to the one set out in the complaint in Action No. B 43572, referred to above. [Tr. fol. 679.]

The defendant in error thereupon rested, without any other evidence having been offered, and the plaintiffs in error made a motion for a nonsuit in each case on the ground that the defendant in error had failed to prove the facts which by section 1241 of the California Code of Civil Procedure must be made to appear before the defendant in error could condemn the property in question, and particularly upon the following four specific grounds, to-wit:

"First: That they have failed to prove that the taking is necessary to the use in question, namely, highway purposes;

Second: That they have failed to prove the public necessity of such proposed public utility or public improvement;

Third: That they have failed to prove that such property which it is proposed to be taken is necessary therefor;

Fourth: That they have failed to prove that such public utility or public improvement is planned or located in the manner which would be most compatible with the greatest public good and the least private injury." [Tr. fols. 681-3.]

Section 1241 of the California Code of Civil Procedure referred to in the motion for a nonsuit, then in force, was and is in words and figures as follows:

> "Before property can be taken, it must appear:
>
> "1. That the use to which it is to be applied is a use authorized by law;
>
> "2. That the taking is necessary to such use; provided, when the legislative body of a county, city and county, or an incorporated city or town, shall, by resolution or ordinance, adopted by vote of two-thirds of all its members, have found and determined that the public interest and necessity require the acquisition, construction or completion, by such county, city and county, or incorporated city or town, of any proposed public utility, or any public improvement, and that the property described in such resolution or ordinance is necessary therefor, such resolution or ordinance shall be conclusive evidence; (a) of the public necessity of such proposed public utility or public improvement; (b) that such property is necessary therefor, and

(c) that such proposed public utility or public improvement is planned or located in the manner which will be most compatible with the greatest public good, and the least private injury; provided, that said resolution ordinance shall not be such conclusive evidence in the case of the taking by any county, city and county, or incorporated city or town, of property located outside of the territorial limits thereof.

"3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use, provided, that where such property has been so appropriated by any individual, firm or private corporation the use thereof for a public street or highway of a county, city and county, or any incorporated city or town, or the use thereof by a county, city and county, or any incorporated city or town, or a municipal water district for the same purposes to which it has been appropriated, or for any public purpose, shall be deemed a more necessary use than the public use to which such property has been already appropriated; and provided, further, that property of any character, whether already appropriated to public use or not, including all rights of any nature in water, owned by any person, firm or private corporation may be taken by a county, city and county, or any incorporated city or town or by a municipal water district, for the purpose of supplying water, or electricity for power, lighting or heating purposes to such county, city and county, or incorporated city or town, or municipal water district, or the inhabitants thereof, or for the purpose of supplying any other public utility,

or for any other public use. Any such taking may be made, either to furnish a separate and distinct supply of such water, and such electricity for power, lighting or heating purposes, or to provide for any such separate and distinct other public utility or other public use that may have been theretofore provided for or that may thereafter be provided for in so supplying or providing for such county, city and county, or incorporated city or town, or municipal water district or the inhabitants thereof; or in conjunction with any other supply or with any other public utility or other public use that may have been theretofore determined upon or that may thereafter be determined upon in accordance with law by the people of any such county, city and county, incorporated city or town or municipal water district. Nothing herein contained shall be construed as in any way limiting such rights as may be given by any other law of this state to counties, cities and counties, incorporated cities or towns or municipal water districts. But private property appropriated to the use of any county, city and county, incorporated city or town, or municipal water district, may not be taken by any other county, city and county, incorporated city or town, or municipal district, while such property is so appropriated and used for the public purposes for which it has been so appropriated."

The motions for a nonsuit were denied and this ruling of the trial court was affirmed by the Appellate Court. The trial court held that under section 1241 of the Code of Civil Pro-

cedure the resolutions were *prima facie* evidence of all the facts required by that section to *be* found, but the Appellate Court held that the trial court was mistaken in this view, holding that the section was *conclusive* evidence of those requisite facts, and hence that the trial court erred in favor of the plaintiffs in error, in holding that the resolutions were only *prima facie* evidence of the necessary facts recited in section 1241, C. C. P. [Tr. fols. 4277-8.]

The judgments of condemnation appealed from by the plaintiffs in error were affirmed by the District Court of Appeal, Second Appellate District, state of California, Division One, on June 11, 1921, and a petition by plaintiffs in error for a hearing by the Supreme Court of the state of California was denied on the 8th day of August, 1921 [Tr. fols. 4294-6], and final judgment by the said District Court of appeal was filed August 11, 1921, and the remittitur filed August 13, 1921. [Tr. fols. 4299-4302.] Thereupon the petition for a writ of error in the Main Road case was presented on October 5, 1921, and allowed on the same day, together with the assignment of errors and prayer for reversal. [Tr. fols. 4303-4361.]

The same procedure was followed with reference to the Alisos Canyon Road case, and substantially the same questions are involved. [Tr. fols. 4385-4432.] It will be noted that

the Main Road case is numbered 3533 in the said District Court of Appeal, and the Alisos Canyon Road case is numbered 3533½. [Tr. fols. 4243-4247.] The record herein referred to involves the following questions:

1. Was the property sought to be condemned for a use authorized by law, and was the taking necessary to such use?

2. Was there any public necessity for the proposed highways, in view of the fact that they were located exclusively upon private property?

3. Were the resolutions adopted by the Board of Supervisors of Los Angeles county conclusive evidence of the facts required to be found by section 1241 of the California Code of Civil Procedure, before a citizen's property may be condemned, and is the proviso of that section constitutional?

4. Was the trial court justified in holding that the resolutions, adopted by the Board of Supervisors of Los Angeles county, were only *prima facie* evidence of the facts required to be found by section 1241 of California Code of Civil Procedure, and that the burden was cast upon plaintiffs in error to negative this *prima facie* showing by clear and convincing evidence?

5. Were plaintiffs in error deprived of their property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, or have they or either of them been denied the equal protection of the laws, in violation of the said amendment?

Specifications of Errors Relied Upon.

The plaintiffs in error rely upon the following errors as set forth in their assignment of errors heretofore filed in Action No. 3533 [Tr. fols. 4311-4359] as follows, to-wit:

"I.

That the District Court of Appeal of the state of California, Second Appellate District, Division One, erred in holding against the contention of the plaintiffs in error that the taking of the property involved in said suit for an alleged public road and highway and sought therein to be condemned for such purposes was necessary for a public use, and that it could under any circumstances afford any accommodation of any kind or character to the traveling public or any part or portion of such traveling public, or that, therefore, the taking of the same for highway purposes would not be without due process of law and would not be in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and that the taking of said property under the resolution in said suit for public highway or other purposes would not be void and would not be a denial to the plaintiffs in error of equal protection of the laws under the Constitution of the United States and would not

contravene the Fourteenth Amendment to the said Constitution of the United States.

II.

That the said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the ruling of the lower court in striking out the second, further and separate answer and defense of the defendant, May K. Rindge, in her amended answer in the above-entitled cause, which was and is in the words and figures following, to-wit:

'And for another and further and separate answer and defense this defendant alleges:

I.

That all of the properties described in paragraphs II and VI of the complaint and in any way involved in this action are entirely upon and within the boundaries of that certain ranch situate in the county of Los Angeles, state of California, commonly known as the Malibu Ranch.

II.

That while a portion of said Malibu Ranch is owned by the defendant, May K. Rindge, and the remaining portion thereof by the defendant Rindge Company, the said ranch as a whole is now, and was at the commencement of this action, and for more than twenty years prior thereto had been treated, operated, managed and controlled as a single ranch under one joint management and control; and has at no time ever been severed or segregated into parts or parcels or treated or handled or managed by the owners thereof as other than a single ranch and holding.

III.

That said method of holding, managing and controlling said ranch by its said two owners has at all times been known to the plaintiff and to the public in general.

IV.

That said Malibu Ranch as such and under that name and designation and as embraced in the original purchase of the same by the defendant, May K. Rindge, and the predecessor in interest of the defendant, Rindge Company, at the point where the proposed road sought to be condemned herein terminates, at the westerly end of said road, ends at and upon the boundary line between the counties of Los Angeles and Ventura, state of California; but that the defendant, Rindge Company, is the owner and in the possession of, and was at the date of the commencement of this action, the owner and in the possession of property immediately adjacent thereto in the said county of Ventura and forming a continuation into said county of Ventura for a distance of about 1¼ miles of the said ranch under the said joint management and control of the said defendants, May K. Rindge and Rindge Company.

V.

That there was not at the commencement of this action and is not now in the said county of Ventura at any point either contiguous to or upon any part or portion of said property of the Rindge Company or within ten miles of the western, that is to say, the Ventura county, end of said ranch, any public road of any kind or character whatever; and that said ranch can be reached from said end only and wholly by private trails and ways.

VI.

That there was not at the commencement of this action, and is not now, any public road or way of any kind or character either upon that portion of said Malibu Ranch located in Los Angeles county or upon that extension of the same in Ventura county; and that the said pro-

posed road or highway sought to be condemned and taken in this action would, if condemned and taken, be located wholly and solely upon that portion of the Malibu Ranch situated in Los Angeles county, would end and terminate upon the private property of the defendant, Rindge Company, at the Ventura county line; would have no laterals or outlets or feeders of any kind or character; would be located wholly and solely upon, and give access wholly and solely to, the private ranch property of the defendants, May K. Rindge and Rindge Company; and would not and could not furnish any way of necessity or convenience to the general public or for public use or travel.

VII.

That neither of said defendants, owners of and jointly managing and controlling said Malibu Ranch as a whole, has any need or desire for said or any public road upon said ranch or upon any part or portion thereof; but that, on the contrary, any such public road would be a constant and continuous menace and damage to their said ranch property, and would largely destroy its value as a unit for ranch purposes; and would be and constitute a continual nuisance; and expense to the said defendants.

VIII.

That by reason of the premises the taking of any part or portion of said property as contemplated by the plaintiff and as prayed for in the complaint for road or highway purposes would be without necessity of any kind or right, and in contravention of the provisions of the Constitution of the United States, and particularly in violation of the Fourteenth Amendment to said Constitution, and would be void and without due process of law, and constitute a denial to the defendants, May K. Rindge and

the Rindge Company, of the equal protection of the laws under the Constitution of the United States, and would contravene the said Fourteenth Amendment to said Constitution.'

III.

That the District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the ruling of the lower court in striking out the third separate answer and defense of the defendant, Rindge Company, in the above entitled cause, which was and is in the words and figures following, to-wit:

'I.

That all of the properties described in paragraphs II and VI of the complaint and in any way involved in this action are entirely upon and within the boundaries of that certain ranch situate in the county of Los Angeles, state of California, commonly known as the Malibu Ranch.

II.

That while a portion of said Malibu Ranch is owned by the defendant, May K. Rindge, and the remaining portion thereof by the defendant Rindge Company, the said ranch as a whole is now, and was at the commencement of this action, and for more than twenty years prior thereto had been, treated, operated, managed and controlled as a single ranch under one joint management and control; and has at no time ever been severed or segregated into parts or parcels or treated or handled or managed by the owners thereof as other than a single ranch and holding.

III.

That said method of holding, managing and controlling said ranch by its said two owners has at all times been known to the plaintiff and to the public in general.

IV.

That said Malibu Ranch as such and under that name and designation and as embraced in the original purchase of the same by the defendant May K. Rindge, and the predecessor in interest of the defendant Rindge Company, at the point where the proposed road sought to be condemned herein terminates at the westerly end of said road, ends at and upon the boundary line between the counties of Los Angeles and Ventura, state of California; but that the defendant Rindge Company is the owner and in the possession of, and was at the date of the commencement of this action, the owner and in the possession of property immediately adjacent thereto in the said county of Ventura, and forming a continuation into said county of Ventura for a distance of about 1¾ miles of the said ranch under the said joint management and control of the said defendants, May K. Rindge and Rindge Company.

V.

That there was not at the commencement of this action and is not now in the said county of Ventura at any point either contiguous to or upon any part or portion of said property of the Rindge Company, or within ten miles of the western, that is to say, the Ventura county, end of said ranch any public road of any kind or character whatever; and the said ranch can be reached from said end only and wholly by private trails and ways.

VI.

That there was not at the commencement of this action, and is not now, any public road or way of any kind or character either upon that portion of said Malibu Ranch located in Los Angeles county, or upon that extension of the said ranch in Ventura county; and that the said proposed road or highway sought to be

condemned and taken in this action would, if condemned and taken be located wholly and solely upon that portion of said Malibu Ranch situated in Los Angeles county, would end and terminate upon the private property of the defendant Rindge Company at the Ventura county line; would have no laterals or outlets or feeders of any kind or character; would be located wholly and solely upon and give access wholly and solely to, the private ranch property of the defendants May K. Rindge and Rindge Company; and would not and could not furnish any way of necessity or convenience to the general public or for public use or travel.

VII.

That neither of said defendants owners of and jointly managing and controlling said Malibu Ranch as a whole, has any need or desire for said or any public road upon said ranch or upon any part or portion thereof; but that, on the contrary, any such public road would be a constant and continuous menace and damage to their said ranch property, and would largely destroy its value as a unit for ranch purposes; and would be and constitute a continual nuisance and expense to the said defendants.

VIII.

That by reason of the premises the taking of any part or portion of said property as contemplated by the plaintiff and as prayed for in the complaint for road or highway purposes would be without necessity of any kind or right, and in contravention of the provisions of the Constitution of the United States, and particularly in violation of the Fourteenth Amendment to said Constitution and would be void and without due process of law, and constitute a denial to the defendants May K. Rindge and Rindge Company of the equal pro-

tection of the laws under the Constitution of the United States, and would contravene the said Fourteenth Amendment to said Constitution.'

IV.

That the District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the ruling of the lower court against the said above-quoted third and separate answer and defense of the defendant Rindge Company in the above-entitled cause.

V.

That the District Court of Appeal of the state of California, Second Appellate District, Division One, erred in holding that the following provisions of Sec. 1241 of the Code of Civil Procedure of the state of California, in force at all times during the pendency of the proceedings involved in the above-entitled cause, to-wit:

'Provided, when the legislative body of a county, city and county, or an incorporated city or town, shall, by resolution or ordinance, adopted by vote of two-thirds of all its members, have found and determined that the public interest and necessity require the acquisition, construction or completion, by such county, city and county, or incorporated city or town of any proposed public utility, or any public improvement, and that the property described in such resolution or ordinance is necessary therefor, such resolution or ordinance shall be conclusive evidence; (a) of the public necessity of such proposed public utility or public improvement; (b) that such property is necessary therefor, and (c) that such proposed public utility or public improvement is planned or located in the manner which will be most compatible with the greatest public good, and the least private injury'

were and are constitutional, and were not in violation of the provisions of the Federal Constitution prohibiting the taking of property without due process of law, and were not violative of the Fourteenth Amendment to the Constitution of the United States, and were not obnoxious to any provision of the state or federal Constitution, and in particular that portion thereof which prescribes that such resolution referred to in said Sec. 1241 of the said Code of Civil Procedure if passed by a vote of two-thirds of all of the members of any such legislative body shall be conclusive evidence of the various matters and things set forth and prescribed in said section as necessary to appear before property can be taken by condemnation.

VI.

Said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in holding and deciding that the county of Los Angeles, was not permitted to and did not in and by the necessary force and effect of the judgment of the Superior Court in this cause deprive these plaintiffs in error of their property without due process of law contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

VII.

Said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in holding and deciding that the county of Los Angeles, the defendant in error, was not permitted to and did not in and by the necessary force and effect of the judgment of the Superior Court in this cause deny to these plaintiffs in error the equal protection of the law contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

VIII.

That the said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in holding and deciding that the property of these plaintiffs in error was not in and by the necessary force, and effect of the judgment of the Superior Court of the state of California in said cause taken for public use without due process of law contrary to the provisions of the Constitution of the United States, and particularly to the provisions of the Fourteenth Amendment thereto.

IX.

That said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the following finding of fact by the lower court in the above-entitled cause:

'That it is necessary for highway purposes and the public interest, convenience and necessity require, the acquisition of an easement in and over the properties particularly described in paragraph II of the said complaint for the construction, establishment and maintenance of a public highway, as prayed in said complaint, and that the use to which the property sought to be taken is to be applied, is a use authorized by law.'

X.

That said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the following finding of fact by the lower court in the above-entitled cause:

'That it is not true that there has been no consideration or determination of the Board of Supervisors of the county of Los Angeles of any of the matters or things alleged in said complaint, and particularly of the matters or

things alleged in said complaint, and particularly of the matters or things alleged in paragraph II of said complaint, nor is it true that the resolution referred to in paragraph II of said complaint was arbitrarily adopted by said Board of Supervisors, without any consideration of the matters or things therein contained or without the exercise of any discretion therein, or well knowing that there was no room for the exercise of any discretion therein, or that it was arbitrarily adopted at all, nor is it true that said resolution was adopted by said Board of Supervisors knowing full well, or otherwise, that all, or that any of the property proposed to be taken for public road and highway, and to be condemned as in said resolution set forth and as in the complaint alleged, was not, and could not be necessary for any public use of any kind or character whatever and cannot under any circumstances, afford any accommodation of any kind or character to the traveling public, or any part or portion thereof, and that the taking of same for said highway purposes would be without due process of law or in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, or that the taking of said property under said resolution for public highway or other purposes, would be void, or would be a denial to the defendants, or to any or either of them, of the equal protection of the laws under the Constitution of the United States, and would contravene the Fourteenth, or any amendment to said Constitution, and in this behalf the court finds that it is true that the property proposed to be taken for public road and highway, and sought to be condemned herein, is located wholly and solely upon and within the confines of private property, except that the easterly end of the strip of land sought to be

taken terminates at, and will be in continuation of, a public highway now, and prior to the commencement of this action, existing; and the court further finds that the highway sought to be established and maintained over and upon the land sought to be taken, and for the purpose of which the taking is sought, will afford accommodation to the traveling public.'

XI.

That said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the following conclusion of law in the above-entitled cause:

'That it is necessary for highway purposes, and the public interest, convenience and necessity require, the acquisition of an easement in and over the property particularly described in the amended complaint in paragraph number II thereof, for the construction, establishment and maintenance of a public highway.'

XII.

That said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the following conclusion of law in the above-entitled cause.

'That the use to which the property sought to be taken is to be applied, is a use, authorized by law.'

XIII.

That the property of the plaintiffs in error sought to be condemned in this action and included in the judgment of condemnation for alleged highway purposes consists of a strip of land forty feet in width running for a length of about twenty-one miles into and exclusively upon the real property in Los Angeles county, California, owned and operated in common by the Rindge Company, a corporation, and May K. Rindge, two of the above named petitioners,

and one hundred and forty-nine additional parcels adjoining and contiguous to said forty-foot strip and all upon and within the exterior boundaries of said lands of said petitioners, Rindge Company and May K. Rindge.

The plaintiffs in error also rely upon the following errors as set forth in their assignment of errors heretofore filed in action No. 3533½ [Tr. fols. 4392-4412] as follows:

I.

That said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the finding in the above entitled cause that the following allegation of paragraph II of the complaint in said cause was true, to-wit:

'That the public interest and necessity require the construction of a public highway over the property hereinafter described,' namely: the property described in said complaint and condemned in said action.

II.

That the said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the finding in the above entitled cause that the following allegation of paragraph II of the complaint in said cause was true, to-wit:

'That for the purpose of constructing a public highway the acquisition of said property is necessary, namely: that certain parcel of land situate in the county of Los Angeles, and described as being,' describing the property condemned in said action.

III.

That said District Court of Appeal of the state of California, Second Appellate District, Division, One, erred in sustaining the follow-

ing finding of the trial court in the above-entitled cause, to-wit:

'That it is not true that there has been no consideration or determination by the Board of Supervisors of the county of Los Angeles of any of the matters or things alleged in said complaint, and particularly of the matters or things alleged in paragraph IV of said complaint, nor is it true that the resolution referred to in paragraph IV of said complaint was arbitrarily adopted by said Board of Supervisors, without any consideration of the matters or things therein contained, or without the exercise of any discretion therein, or well knowing that there was no room for the exercise of any discretion therein, or that it was arbitrarily adopted at all, nor is it true that said resolution was adopted by said Board of Supervisors knowing full well, or otherwise, or at all, that any of the property proposed to be taken for a public road and highway, and to be condemned, as in said resolution set forth and as in complaint alleged, was not, and could not be necessary for any public use of any kind or character whatever, and cannot, under any circumstances, afford any accommodation of any kind or character to the traveling public, or any part or portion thereof, and that the taking of same for said highway purposes would be without due process of law or in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, or that the taking of said property under said resolution for public highway or other purposes, would be void, or would be a denial to the defendant, of the equal protection of the laws under the Constitution of the United States, and would contravene the Fourteenth or any amendment to said Constitution, and in this behalf the court finds; that it is true that

the property proposed to be taken for a public road and highway, and sought to be condemned herein, is located wholly and solely upon and within the confines of private property, except that the southerly end of the strip of land sought to be taken terminates at, and will connect with, another strip of land sought to be acquired by the plaintiff in another action (which other action was tried at the same time as, and with this action, and before the same court and jury) brought for the purpose of condemning said last mentioned strip of land for public highway purposes, and the court further finds that the highways sought to be established and maintained over and upon the land sought in this action to be taken and for the purpose of which the taking is sought, will afford accommodation to the traveling public.'

IV.

That said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the following conclusion of law in the above-entitled cause, to-wit:

'That it is necessary for highway purposes, and the public interest, convenience and necessity require, the acquisition of an easement in and over the property particularly described in the amended complaint in paragraph number II thereof, for the construction, establishment and maintenance of a public highway.'

V.

That said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in sustaining the following conclusion of law in the above-entitled cause, to-wit:

'That the use to which the property sought to be taken is to be applied, is a use authorized by law.'

VI.

That the District Court of Appeal of the state of California, Second Appellate District, Division One, erred in holding that the following provisions of Sec. 1241 of the Code of Civil Procedure of the state of California, in force at all times during the pendency of the proceedings involved in the above-entitled cause, to-wit:

'Provided, when the legislative body of a county, city and county or an incorporated city or town, shall by resolution or ordinance, adopted by vote of two-thirds of all its members have found and determined that the public interests and necessity require the acquisition, construction or completion, by such county, city and county or incorporated city or town, any proposed public utility, or any public improvement, and that the property described in such resolution or ordinance shall be conclusive evidence: (a) of the public necessity of such proposed public utility or public improvement; (b) that such property is necessary therefor, and (c) that such proposed public utility or public improvement is planned or located in the manner which will be most compatible with the greatest public good, and the least private injury,' were and are constitutional, and were not in violation of the provisions of the Federal Constitution prohibiting the taking of property without due process of law, and were not violative of the Fourteenth Amendment to the Constitution of the United States, and were not obnoxious to any provision of the State or Federal Constitution, and in particular that portion thereof which prescribes that such resolution referred to in said Sec. 1241 of the said Code of Civil Procedure if passed by a vote of two-thirds of all of the members of such a legislative body shall be conclusive evidence

of the various matters and things set forth and prescribed in said action as necessary to appear before property can be taken by condemnation.

VII.

Said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in holding and deciding that the county of Los Angeles was not permitted to and did not in and by the necessary force and effect of the judgment of the Superior Court in this cause deprive these plaintiffs in error of their property without due process of law contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

VIII.

Said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in holding and deciding that the county of Los Angeles, the defendant in error, was not permitted to and did not in and by the necessary force and effect of the judgment of the Superior Court in this cause deny to these plaintiffs in error the equal protection of the law contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

IX.

That the said District Court of Appeal of the state of California, Second Appellate District, Division One, erred in holding and deciding that the property of these plaintiffs in error was not in and by necessary force and effect of the judgment of the Superior Court of the state of California in said cause taken for public use without due process of law contrary to the provisions of the Constitution of the United States, and particularly to the provisions of the Fourteenth Amendment thereto."

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ARGUMENT.

I.

The Special Defenses Stricken Out Raised the Question Whether the Land Sought to Be Condemned Was Being Taken for a Public Use, Authorized by Law.

The first two questions stated as being involved upon this appeal are raised by the order of the court striking out the special defenses in the amended answers of the defendants, May K. Rindge, and the Rindge Company. That portion of the amended answer of May K. Rindge, stricken out, appears in the statement, *supra.*

The amended answer of the Rindge Company contained a special defense "in the same identical words and figures" as the above, and it was also stricken out by the court on motion of the defendant in error. [Tr. fols. 642-658.]

This special defense was pleaded upon the theory that an isolated road, wholly within the boundaries of what is practically one property, which is not necessary for the use of, and not only not desired by but strenuously opposed by, the owners of such property, and that could and would afford no real or genuine service to any part of the public for road purposes in any true sense of such purposes, could

not possibly be a public necessity for which condemnation would lie.

It is our firm belief that this defense, if substantiated (and for the purpose of the motion to strike, it had to be accepted as true), would justify the application of the sound doctrine, well recognized but seldom invoked, that private property cannot be taken under the guise or upon pretence of necessity for a public use where demonstrably it would not and could not subserve any such use. Under such circumstances the taking of such property would not constitute "the exercise of 'legal legislative [or judicial] discretion;'" for the fact of the impossibility of its being necessary for a public use under the established conditions would leave no room for the exercise of any discretion, and therefore such taking would merely be power "arbitrarily exerted."

> Myles Salt Co. v. Iberia Drainage District, 239 U. S. 478, 485, 60 L. Ed. 392 citing—
>
> Houck v. Little River Drainage Dist., 239 U. S. 254, 60 L. Ed. 266;
>
> Norwood v. Baker, 172 U. S. 269, 43 L. Ed. 269.

In Myles v. Drainage Dist., *supra,* an assessment district for drainage purposes and to prevent lands from being overflowed was formed, embracing a tract of land owned by the plain-

tiff, which was elevated property. It was land situated above the overflow of waters, and was not susceptible of being drained by any plan of improvement which was formed and adopted, nor by any plan which might have been adopted.

There the proceedings were clothed with all of the forms of law, hearings were provided for, and it was proposed to assess only lands which were susceptible of being drained or prevented from being overflowed, or otherwise improved by the plan or scheme of improvement, and yet the result of the proceedings was that elevated lands of the plaintiff, situated in altitude high above the water and not susceptible of being drained and prevented from being overflowed and lands of high value, were assessed according to their value for the sole benefit of other owners, whose lands were in fact overflowed or damaged by waters.

The Supreme Court said:

> "It is said that 'under the law of Louisiana the action of the legislative body (the Police Jury), in the exercise of its discretion in a drainage district, will not be inquired into by the court, except upon a special averment of fraud which is not pleaded.' And such decision, it is further contended, was a decision upon the state law and presents no federal question, the statute of the state not being attacked.
>
> "We cannot concur in the contention. It is true the law of the state as written is not attacked, but the law as administered

and justified by the Supreme Court of the state is attacked and it asserted to be a violation of the Constitution of the United States. The question presented is federal and the motion to dismiss is denied. And the considerations that move a denial of the motion move a decision of the merits of the question.

"The charge is the plaintiff's property was included in the district not in the exercise of 'legal legislative discretion,' not that the scheme of drainage would inure to the benefit of the property, even indirectly, but with the predetermined 'purpose of deriving revenues to the end of granting a special benefit to the other lands subject to be improved by drainage, without any benefit' to plaintiff 'or its property whatever,' present or prospective.

"Nothing could be more arbitrary if drainage alone be regarded."

(Op., p. 484.)

And again:

"We are not dealing with motives alone but as well with their resultant action; we are not dealing with disputable grounds of discretion or disputable degrees of benefit, but with an exercise of power determined by considerations not of the improvement of plaintiff's property but solely of the improvement of the property of others — power, therefore, arbitrarily exerted imposing a burden without a compensating advantage of any kind."

(Op., p. 485.)

So here, if the allegations of these special defenses were true, and for the purpose of the

motion they were true, there would be no possible room for the exercise of legislative or judicial discretion in the premises; for the contemplated road could serve no useful or necessary purpose to any part of the public whatever.

Even the fact that it might be scenically desirable (and there is no evidence in the record to support that presumption) presents no ground for striking out this defense. That contention might have been urged and attempted proof of its scenic value might have been offered in rebuttal of this defense, and an issue upon it thus have been raised. But the lower court had no legal right to arbitrarily assume upon the motion to strike that any such answer to the special defense pleaded would be urged or could have been successfully proven.

In other words, our special defenses tendered the issue that there was no public necessity to be served by reason of the special facts pleaded; and the trial court arbitrarily decided, in effect that, even if the facts pleaded showed the absolute want of any public necessity, and therefore eliminated any possible exercise of discretion as to that vital matter, nevertheless such demonstrated want of necessity was no defense to the action.

In the case of Kansas City v. Hyde, 196 Mo. 498, 96 S. W. 201, 113 Am. St. Rep. 766, the court said:

> "To the City Council the state has delegated the power to condemn land for a public use, it has no power to condemn for a private use; 'public' in that connection means everybody; if the use is not for everybody, it is a private use; if to an individual, or to any number of individuals, is given the right to use the property in such manner as will practically exclude the general public, it is a giving of the property to private use and a destruction of its public service character."

The special defenses stricken out show that the roads condemned were entirely upon private property and terminated upon the private property of certain of the plaintiffs in error with no contiguous roads of any kind whatsoever; that the Malibu Ranch where the road terminated at the westerly end "can be reached from said end only and wholly by private trails and ways"; that the said "proposed road or highway sought to be condemned and taken in this action would if condemned and taken, be located wholly and solely upon that portion of the said Malibu Ranch situated in Los Angeles county, would end and terminate upon the private property of the defendant, Rindge Company, at the Ventura county line; would have no laterals or outlets or feeders of any

kind or character; would be located wholly and solely upon, and give access wholly and solely to, the private ranch property of the defendants, May K. Rindge and Rindge Company; and would not and could not furnish any way of necessity or convenience to the general public or for public use or travel."

This portion of the special defense brings the case at bar within the principle announced in the quotation from the case last cited, for certainly the general public will be *"practically excluded" from a highway which commences and ends upon private property, without "laterals or outlets or feeders of any kind or character."*

We submit, therefore, that the two first questions stated in our brief should be answered in the negative, and if so, the judgments of condemnation should be reversed.

II.

The Amendment of 1913 to Section 1241 of the California Code of Civil Procedure, Declaring Certain Resolutions to Be Conclusive Evidence of the Facts Stated, Was and Is Unconstitutional and Void.

The third question involves the validity of the proviso to subdivision 2 of section 1241 of the California Code of Civil Procedure, and the

effect of said section in a condemnation proceeding.

There are certain matters which the law requires the county to establish—which "must appear"—"before property can be taken."

These are enumerated in section 1241 of the Code of Civil Procedure. They are:

> "1. That the use to which it is to be applied is a use authorized by law.
> "2. That the taking is necessary to such use," which involves,
> "(a) 'The public necessity' of the proposed improvement;
> "(b) That the property sought to be taken is necessary therefor'; and
> "(c) That the improvement is planned or located in the manner which will be the most compatible with the greatest public good and the least private injury.
> "3. If already appropriated to some public use, that the public use to which it is to be applied, 'is a more necessary public use.'"

The following proviso was incorporated in section 1241, C. C. P., by an amendment of 1913:

> "Provided, when the legislative body of a county, city and county, or incorporated city or town, shall, by resolution or ordinance, adopted by vote of two-thirds of all its members, have found and determined that the public interest and necessity require the acquisition, construction or completion, by said county, city and county, or incorporated city or town, of any proposed public utility or of a public improvement,

and that the property described in such resolution or ordinance is necessary therefor, such resolution or ordinance shall be conclusive evidence:

"(a) Of the public necessity of such proposed public utility or public improvement;

"(b) That such property is necessary therefor; and

"(c) That such proposed public utility or public improvement is planned or located in the manner which will be most compatible with the greatest good and the least private injury; provided, that said resolution or ordinance shall not be such conclusive evidence in the case of the taking by any county, city and county, or incorporated city or town, of property located outside of the territorial limits thereof."

California Stats. 1913, p. 549.

Section 1242 of the California Code of Civil Procedure then and now reads as follows:

"In all cases where land is required for public use, the state, or its agents, in charge of such use, may survey and locate the same; but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of section twelve hundred and forty-seven. The state, or its agents in charge of such public use, may enter upon the land and make examinations, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except for injuries resulting from negligence, wantoness, or malice."

We contended, at the trial, that if the road laws of this state contemplated the institution of condemnation proceedings by any such *ex parte* resolution of the board of supervisors as that which forms the sole basis of this action, and further contended that if the foregoing *proviso* applied to such a resolution, then the proviso would be unconstitutional as attempting to authorize the taking of property without due process of law, no hearing of any sort being provided for or accorded to the property owners in the premises.

Under such circumstances, all of the vital questions essential to the taking of private property for public use, except only the one question of the amount of damages to be awarded for such taking, could be arbitrarily and conclusively determined by a two-thirds vote of the supervisors without any notice whatever to the land owner and without any opportunity whatever on his part to be heard.

The trial court sustained the contention of plaintiffs in error that this proviso would be unconstitutional if given the construction its language imports, but also reached the unwarranted conclusion that the resolutions did, without other proof, establish *prima facie* the facts required to be found by said section 1241. But the Appellate Court, as we have pointed out, disagreed with the trial court on this point, and

held that the Code section meant what it said and was valid; and for that reason, refused to review the evidence introduced in pursuance of the ruling of the trial court on the question of necessity. [Tr. fols. 4266-4282.]

The validity of the Amendment of 1913 to this code section 1241, therefore, is clearly presented by the record in the case at bar, and we will now discuss it. The proviso appearing in subdivision 2 of section 1241, C. C. P., was an amendment enacted by the Legislature in the year 1913. (California Statutes and Amendments 1913, p. 549.)

Prior to the amendment of section 1241 C. C. P., Subd. 2, by Statutes of 1913, page 549 (effective August 10th, 1913, the necessity or expediency of taking private property for a public use was subject to judicial inquiry.

Madera Ry. Co. v. Raymond Granite Co., 3 Cal. App. 668, 676, etc.;
Lindsay I. Co. v. Mehrtens, 97 Cal. 676;
Vallejo etc. R. R. Co. v. Reed Orchard Co., 169 Cal. 545, 561;

Assuming, therefore, that prior to 1913, the court was authorized to inquire into the question of whether or not the taking was necessary to such public use, what effect did the amendment to subdivision 2 (adding the proviso) have? This proviso reads as above indicated.

Section 1 of article VI of the California Constitution reads as follows:

> "The judicial power of the state shall be vested in the senate, sitting as a court of impeachment, in a Supreme Court, District Courts of Appeal, Superior Courts and such inferior courts as the Legislature may establish in any incorporated city or town, township, county, or city and county."

By the express terms of section 1241 C. C. P., it is made necessary for the facts therein recited to appear "before property can be taken." Must appear to whom? Obviously to the court in which the condemnation suit is being tried. But this amendment assumes to deprive the court of the judicial function of determining these necessary facts, upon evidence admitted upon the trial, of the character and weight sufficient to satisfy the judicial mind, by declaring that if the legislative body referred to adopts the resolution in a certain manner, the production of the resolution shall be conclusive evidence of the said necessary facts.

As was said in Bacon v. Bacon, 150 Cal. 477, at page 484:

> "The Legislature does not possess power to divest the court of its constitutional jurisdiction. It may change the practice or procedure, the mere method by which the jurisdiction is exercised * * * but it cannot take away the jurisdiction entirely, nor substantially impair it."

In San Jose Ranch Co. v. San Jose etc. Co., 126 Cal. 322, the court, at page 326, said:

> "It is the right of every person, before he can be deprived of his property, to have a trial according to law, to have the same character of trial, governed *by the same established rules of evidence and procedure* as are applied in other cases under similar conditions." (Italics ours.)

By the proviso now under discussion the Legislature attempted to deprive the appellants and all other defendants in similar condemnation suits of this valuable right, by declaring that the courts *must hold* that the mere production of a resolution adopted by the body corporate, seeking the condemnation of certain property, is conclusive evidence of the essential facts that must appear before the "property can be taken." It seems to us that the mere statement of this proposition is sufficient to demonstrate its unconstitutionality, for as was again said in the case last cited:

> "Uniformity in the administration of justice is a fundamental right, and every litigant may demand that his case shall be tried, so far as practicable, by the same established rules of procedure and evidence as well as upon the same principles which are applied to other like controversies."

In the case of Ennis-Brown v. Central Pac. Ry. Co. *et al.*, 235 Fed. 825, Judge Ross, in de-

livering the opinion of the Circuit Court of Appeals, said:

> "The court in such a case *must determine* whether the use to which it is sought to subject the property is one authorized by law and *that the taking is necessary to such use* (C. C. P., Sec. 1241), *which essentially includes the right to determine to what extent the proposed taking is necessary*—the precise question which plaintiff presents by the present bill." (Italics ours.)

It will be noted that both of these opinions were filed after the amendment to Sec. 1241 C. C. P. in the year 1913, and the inference is that the learned judges who delivered those opinions were of the opinion that the necessity for the taking of private property for a public use is still a judicial question to be determined by the court upon the evidence introduced in each particular case. We contend that any law that would prevent a party from showing that his property was being taken without necessity and for a private purpose would be equivalent to legislative confiscation and void. It is not competent for the Legislature to make certain acts conclusive evidence when the ultimate result would be to take property of a citizen without necessity and without any opportunity to be heard.

In R. C. L., Vol. 10, page 864, the author says:

> "But a law which would practically shut out the evidence of a party and thus deny him the opportunity for a trial would be substantially to deprive him of due process of law."

In Board of Com. etc. of Auburn v. Merchant, 106 N. Y. 143, 57 Am. Rep. 705, the court upheld a law declaring certain facts to be *prima facie* evidence of the violation of a criminal statute and in the course of the opinion points out the difference between such a law and one declaring certain facts to be *conclusive evidence,* thereby depriving a party of the right to be heard. The court said:

> "The rules of evidence are not an exception to the doctrine that all rules and regulations affecting remedies are, at all times, subject to modification and control by the Legislature * * *. It may be conceded, for all the purposes of this appeal, that a law that should make evidence conclusive which was not so necessarily in and of itself, and thus preclude the adverse party from showing the truth, would be void, as indirectly working a confiscation of property or a destruction of vested rights. But such is not the effect of declaring any circumstance or any evidence, however slight, *prima facie* proof of a fact to be established, leaving the adverse party at liberty to rebut and overcome it by contradictory and better evidence."

It has been held that the Legislature has no power to make tax deeds *conclusive evidence of any jurisdictional fact, or fact vital to the exercise of the power of taxation or sale, divesting the title of property for the nonpayment of taxes.*

10 R. C. L. p. 867, sections 8-9;
Larson v. Dickey, 39 Neb. 463, 58 N. W. 167, 42 A. S. R. 595.

In the last case cited the court said:

> "The constitution of this state has not committed to the Legislature the power of conclusively determining what facts are jurisdictional or vital to the exercise of the power of taxation or sale divesting the title of the citizens' property for the nonpayment of taxes. Such determination belongs to the judiciary."

In a note to People v. Cannon (139 N. Y. 32), 36 Am. St. Rep. 668, the author, at page 683, says:

> "It may be conceded for all the purposes of this power *that a law that should make evidence conclusive which was not so necessarily in and of itself and thus preclude the adverse party from showing the truth, would be void as indirectly working a confiscation of property or a destruction of vested rights.*"

And this note furnishes many illustrations showing that it is only competent for the Legislature to declare a tax deed conclusive evidence

of unessential procedure which might have been dispensed with, originally, but not of an essential fact so indispensable "that without its performance no tax can be raised." In such a case that fact can not be dispensed with by legislative fiat so as to prevent the owner from showing the truth.

In Allen v. Armstrong, 16 Iowa 513, the rule as quoted in the note referred to is stated as follows:

> "The true rule on the subject seems to be that the Legislature may make a tax deed conclusive evidence of the regularity of the prior proceedings as to all nonessentials or matters of routine which rest in mere expediency—acts which need not have been required in the first place, as an affidavit of the sheriff to the delinquent list—and which the Legislature may, by a curative act, excuse when omitted. But the owner of property can not be precluded from showing the invalidity of a tax deed thereto by proving the omission of any act essential to the due assessment of the same, or levy of the taxes thereon and sale thereof on that account. As to the performance of these acts and the facts necessary to constitute them, the deed can only be made *prima facie* evidence."

Again it is said at page 689 of the note:

> "In civil cases, though we have met no direct adjudication on the subject, we think it safe to assert that where a party would be able to establish his cause of action and

of defense, were he permitted to prove the truth, and such cause or defense does not consist of a mere irregularity or technicality, *he cannot be precluded from offering such proof by a statute creating a conclusive presumption against him.*"

In the case of L. R. etc. R. R. Co. v. Payne, 33 Ark. 816, 34 Am. Rep. 55, the court said:

"It is not within the province of the Legislature to divest rights by prescribing to the courts what should be conclusive evidence. This matter was fully considered by this court in the case of Cairo v. Fulton R. R. Co. v. Parks, 32 Ark. 131, which arose under a statute, which endeavored to make a county clerk's deed of lands, sold for taxes, conclusive of its recitals against the true owner. Justice Walker, in delivering the opinion, remarked: 'The Legislature may declare what shall be received as evidence, but it cannot make that conclusively true which may be shown to be false; at all events, if such facts are necessary to show that the substantial rights of property are to be affected, and he is made to lose his property.' Railroad companies have the right to run their trains, and the consequent right of being protected in doing so, unless damage to others should result from some negligence, want of due care, or culpable neglect of reasonable precautions, imposed by the legislative power. It affects their substantial rights of property to be able to show the facts, and they cannot be constitutionally deprived of the power."

In Hammond v. State of Ohio, 84 N. E. 416, 125 A. S. R. 684, 15 L. R. A. (N. S.) 906, the same principle was applied to a criminal case.

In a note to the same case appearing in Ann. Cases, Vol. 14, page 734, it is said:

> "There is, of course, a vast difference between the power of the Legislature to declare that proof of certain facts shall constitute *prima facie* evidence and *its power to declare that certain evidence shall be conclusive.* It should be observed, however, that, as recognized by Mr. Wigmore, statutes which make certain evidence conclusive, generally change, not the rules of evidence, but the substantive law * * *. It has been said that closing the mouth of a person when he comes into court has the same effect as depriving him of his day in court to vindicate his rights. A statutory provision to the effect that the certificate of the state weighmaster as to the weight of grain shall be conclusive upon all the parties has accordingly been held to be unconstitutional. (Vega Steamship Co. v. Consolidated Elevator Co., 75 Minn. 309, 77 N. W. 973, 74 Am. St. Rep. 484.) Language to the effect that a statute providing that certain evidence shall be conclusive is unconstitutional, may also be found in a number of cases. (See State v. Thomas, 144 Ala. 77, 6 Ann. Cas. 744, 40 So. 271; Jacques etc. Co. v. Carstarphen Warehouse Co., 131 Ga. 1, 62 S. E. 82; Pittsfield etc. R. Co. v. Harrison, 16 Ill. 81; People v. Rose, 207 Ill. 361, 69 N. E. 762; Wantlan v. White, 19 Ind. 470; Voght v. State, 124 Ind. 358, 24 N. E. 680; State v. Beach, 147 Ind. 74, 43 N. E. 949, 46 N. E. 145,

36 L. R. A. 179; Allen v. Armstrong, 16 Ia. 508; Howard v. Moot, 64 N. Y. 262.) And it has been held that the legislature has no power to provide that the fact in issue may be conclusively proved by the oath of the complainant. (Savannah etc. R. Co. v. Geiger, 21 Fla. 669, 58 Am. Rep. 697; Ely v. Thompson, 3 A. K. Marsh (Ky.) 73.)"

The rule is thus stated by the author of Cyc., Vol. 8, pages 820-1:

> "The Legislature has power to give greater effect to evidence than it possesses at common law and in both civil and criminal proceedings it may declare what shall be *prima facie* evidence. *On the other hand it cannot prescribe what shall be conclusive evidence, as this would be an invasion of the province of the judiciary.*"

After quoting the rule the court in State v. Jim Thomas, 144 Ala. 77, 6 Ann. Cases, 745, says:

> "This seems to be a rule of well nigh, if not universal recognition."

In 2 Wigmore on Ev., Sec. 1353, page 1666, that learned author states the rule and the reason for it as follows:

> "To this question the answer can hardly be doubtful. It is one thing for the judiciary, while exercising in its own way its constitutional powers, to choose to accept the aid of an official certificate in reaching its determination; but it is quite a different thing for the judiciary to be forbidden alto-

gether to exercise its powers in a certain class of cases. The judicial function under the Constitution is to apply the law; to apply the law necessarily involves the determination of the facts; and to determine the facts necessarily involves the investigation of evidence as a basis for that determination. To forbid investigation is to forbid the exercise of an indestructible judicial function. To make a rule of conclusive evidence, compulsory upon the judiciary, is to attempt an infringement upon their exclusive province."

He cites in the note, J. Nisbet, in Bordsong v. Brooks, 7 Ga. 88, 92, who said:

"The Legislature has no power to legislate the truth of facts, whether facts upon which rights depend are true or false is an inquiry for the courts to make, under legal forms. It belongs to the judicial department of the government."

In applying this principle to tax deeds the U. S. Supreme Court, in Marx v. Hanthorne, 148 U. S. 172, 37 L. Ed. 410, said:

"Without going at length into the discussion of a subject so often considered, we think the conclusion reached by the courts generally may be stated as follows: 'It is competent for the Legislature to declare that a tax deed shall be *prima facie* evidence not only of the regularity of the sale, but of all prior proceedings, and of title in the purchaser, but that the Legislature cannot deprive one of his property by making his adversary claim to it, whatever that claim may be, conclusive of its own valid-

ity, and it cannot, therefore, make the tax deed *conclusive* evidence of the holder's title to the land.' "

The same distinction between the power of the Legislature to declare certain facts to be *prima facie* evidence of an ultimate fact or conclusion and to make the same facts conclusive evidence, is noted in the California cases.

See:

Clarke v. Mead, 102 Cal. 516, 519.

The defendants were brought into court by the county of Los Angeles in an action seeking to condemn their property, and these defendants, the plaintiffs in error herein, were entitled to prove any facts tending to show that, under existing law, the county was not entitled to the relief sought. The law did not provide for any hearing before the Board of Supervisors on these vital questions, and it was not competent for the California Legislature to say that the resolutions adopted *ex parte*, and without any opportunity to be heard, should, when the defendants appeared in court, also prevent them from disproving the allegations of the complaint.

In Larson v. Dickey, 39 Neb. 463, 42 A. S. Rep. 595, 606, this principle was clearly stated as follows:

"Due process of law not only requires that a party shall be properly brought into court, but that he shall have the opportunity, when in court, to establish any fact, which, according to the usages of common law or provisions of the constitution, would be a protection to his property: Wright v. Cradlebaugh, 3 Nev. 341. There are fixed bounds to the power of the Legislature over the subject of evidence, which must not be exceeded. As to what shall be evidence and who shall assume the burden of proof, its power is unrestricted so long as its rules are impartial and uniform; but it has no power to establish rules which, under pretense of regulating evidence, altogether prohibit a party from exhibiting his rights: Cooley's Constitutional Limitations, 4th Ed. 457. While the courts should treat with great respect the enactments of the legislative department of the government, yet the courts, which stand as the last resort of the citizen, and the sworn guardian of his property rights, cannot fail to recognize that there are some things which even a legislature cannot do."

The same principle is clearly and forcibly stated in Windsor v. McVeigh, 93 U. S. 274, 23 L. Ed. 914, in the following language:

"That there must be notice to a party of some kind, actual or constructive, to a valid judgment affecting his rights, is admitted. Until notice is given, the court has no jurisdiction in any case to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject-matter. But notice is only for the purpose of affording the party an oppor-

> tunity of being heard upon the claim or the charges made; it is a summons to him to appear and speak, if he has anything to say, why the judgment sought should not be rendered. A denial to a party of the benefit of a notice would be in effect to deny that he is entitled to notice at all, and the sham and deceptive proceeding had better be omitted altogether. It would be like saying to a party: appear, and you shall be heard; and when he has appeared, saying: vour appearance shall not be recognized and you shall not be heard. In the present case, the district court not only in effect said this, but immediately added a decree of condemnation, reciting that the default of all persons had been duly entered. It is difficult to speak of a decree thus rendered with moderation; it was, in fact, a mere arbitrary edict, clothed in the form of a judicial sentence."

The above language is quoted with approval in Hovey v. Elliott, 167 U. S. 409, 42 L. Ed. 215, and many authorities cited on the subject, the court saying:

> "This language but expresses the most elementary conception of the judicial function."

And yet the California Legislature, in effect, said, by the amendment to section 1241 C. C. P., to the plaintiffs in error, you are called into court for the purpose of forcing you to part with the title to your property, but you shall not be permitted to speak, or introduce any evidence as to the facts which are required by law to

be found before the property can be condemned. Under such circumstances is it not true, as was said by the court in Windsor v. McVeigh, *supra*, that a

> "decree thus rendered" * * * "was, in effect, a mere arbitrary edict, clothed in the form of a judicial sentence."

In Missouri etc. Ry. Co. v. Simonson, 64 Kan. 802, 91 Am. St. Rep. 248, the rule now being considered was stated in the following language:

> "Is it in the power of the Legislature thus to create a conclusive presumption in a matter of private contract? We are constrained to believe that it is not. Every suitor is entitled to his day in court and to have his case determined on such evidence as legal policy will allow. It is doubtless competent for the Legislature to prescribe many of the rules of evidence. The subjects of the competency of witnesses, the order of trials, the burden of proof, the effect of public records, the certification of copies of official documents, the *prima facie* character of certain evidence, and other like matters which pertain to the practice rather than the right of proving causes are lawfully within the sphere of legislative regulation; but it is not within the power of the Legislature to exclude from the courts that which proves the truth of a case, nor, on the other hand, to compel them to receive that which is false in character * * *. In Cooley on Constitutional Limitations, fifth edition, 453, it is said: 'But there are fixed bounds

to the power of the Legislature over this subject which cannot be exceeded. As to what shall be in evidence, and which party shall assume the burden of proof in civil cases, its authority is practically unrestricted so long as its regulations are impartial and uniform; but it has no power to establish rules which, under pretense of regulating the presentation of evidence, go so far as altogether to preclude a party from exhibiting his rights. Except in those cases which fall within the familiar doctrine of estoppel at the common law, or other cases resting upon the like reasons, it would not, we apprehend, be in the power of the Legislature to declare that a particular item of evidence should preclude a party from establishing his rights in opposition to it. In judicial investigations the law of the land requires an opportunity for a trial; and there can be no trial, if only one party is suffered to produce his proofs. The most formal conveyance may be a fraud or a forgery; public officers may connive with rogues to rob the citizen of his property; witnesses may testify or officers certify falsely, and records may be collusively manufactured for dishonest purposes; and that legislation which would preclude the fraud or wrong being shown, and deprive the party wronged of all remedy, has no justification in the principles of natural justice or of constitutional law."

Then, after citing a number of authorities, including Chicago etc. Ry. Co. v. Minnesota, 134 U. S. 418, the Kansas court said:

"The theory on which all these cases proceed is that an act of the Legislature

> which undertakes to make a particular fact or matter in evidence involving the substantive right of the case conclusive upon the parties, and which precludes inquiry into the meritorious issues of the controversy, is an invasion of the judicial province and a denial of due process of law. The Legislature may regulate the form and the manner of use of the instruments of evidence—the media of proof—but it cannot preclude a party wholly from making his proof. A statute which declares what shall be taken as conclusive evidence of a fact is one which, of course, precludes investigation into the fact, and itself determines the matter in advance of all judicial inquiry. If such statutes can be upheld, there is then little use for courts, and small room indeed for the exercise of their functions."

The condemnation of the amendment to section 1241 of the California Code of Civil Procedure could not be more accurately or strongly stated than in this opinion, and we respectfully submit that it is unconstitutional and void for the reasons therein stated.

See also:

12 Corpus Juris, pp. 823, 824, Sec. 285.

In the opinion of the District Court of Appeal it is said:

> "This contention (that the proviso is unconstitutional) is based upon the claim that the determination of the facts so found by the resolution were in their na-

> ture judicial, and since the action of the board in adopting the resolution was had *ex parte,* and without notice, or hearing given to appellants, the effect of the judgment based thereon was to deprive them of their property without due process of law * * *. When the use is public, the necessity of appropriating any particular property therefor is not a subject of judicial cognizance, but which appertains to the legislative branch of the government, and the right to so appropriate may be exercised by the state *or such subordinate bodies to which by legislative grant the power is entrusted.*" (Italics ours.)

As an abstract proposition this quotation may be conceded to be a correct statement of the law (for the purposes of this argument) and yet its fallacy, as applied to the case at bar, lies in the unwarranted assumption that the state of California has delegated the power "to so appropriate" the land of its citizens to any "subordinate" body—or in this case to the Board of Supervisors. On the contrary, as we have just attempted to show, and, we think, successfully, the state of California, by section 1241 C. C. P. and the whole chapter on Eminent Domain (C. C. P. sections 1237-1264) *has expressly required the courts to ascertain and find those essential facts* of the public use, the public necessity, and the proper location of the proposed improvement "before condemnation"

(California C. C. P. sections 1241, 1242), and hence the whole reasoning of the appellate court proceeds from a false premise, and necessarily results in an incorrect conclusion, insofar as the instant case is concerned.

On November 5, 1918, an amendment to section 14, article I of the California Constitution was adopted by a vote of the people. The section as amended reads as follows:

> "Private property shall not be taken or damaged for public use without just compensation having first been made to, or paid into court for, the owner, and no right of way shall be appropriated to the use of any corporation, except a municipal corporation or a county, until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefits from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a court of record, as shall be prescribed by law [provided, that in an action in eminent domain brought by the state, or a county, or a municipal corporation, or a drainage, irrigation, levee, or reclamation district, the aforesaid state or political subdivision thereof or district may take immediate possession and use of any right of way required for a public use, whether the fee thereof or an easement therefor be sought upon first commencing eminent domain proceedings according to law in a court of competent jurisdiction and thereupon giving such security in the

way of money deposits *as the court in which such proceedings are pending may direct,* and in such amounts *as the court may determine* to be reasonably adequate to secure to the owner of the property sought to be taken immediate payment of just compensation for such taking and any damage incident thereto, *including damages sustained by reason of an adjudication that there is no necessity for taking the property, as soon as the same can be ascertained according to law.* The court may, upon motion of any party to said eminent domain proceedings, after such notice to the other parties as the court may prescribe, alter the amount of such security so required in such proceedings.] The taking of private property for a railroad run by steam or electric power for logging or lumbering purposes shall be deemed a taking for a public use, and any person, firm, company or corporation taking private property under the law of eminent domain for such purposes shall thereupon and thereby become a common carrier."

(NOTE: The only changes in the section effected by the said amendment are enclosed in brackets and the portions to which we call special attention are italicised.)

It will be observed that if any of the public agencies described in the amendment choose to ask possession of the property sought to be condemned, pending the litigation, they are required to deposit money in such amounts.

"as the court in which such proceedings are pending may direct * * * to secure to the owner of the property to be taken im-

> mediate payment of just compensation for such taking and any damage incident thereto, *including damages sustained by reason of an adjudication that there is no necessity for taking the property,* as soon as the same can be ascertained 'according to law'." (Italics ours.)

If it be true that the "legislative" fiat of the Board of Supervisors was conclusive evidence of the "necessity for taking the property," *how could there ever be "an adjudication that there is no necessity for taking the property"?*

The language of this constitutional amendment is utterly inconsistent with the conclusion of the appellate court on this question, and amounts to a constitutional declaration, insofar as California is concerned (whatever may be the rule elsewhere), that the question of the necessity for taking an owner's property for an alleged public use, in this state, is a judicial question, which must be "adjudicated" by a "court of competent jurisdiction" and by the orderly procedure, provided in such cases; and that such court can not be controlled in its decision upon the essential facts, required to be found "before condemnation," by a resolution of any of the political subdivisions, described in said constitutional amendment quoted *supra.*

In Mobile J. & K. C. R. Co. v. Turnipseed, 219 U. S. 35, 55 L. Ed. 78, while the court sustained a statute of Mississippi declaring that

proof of injury inflicted by the running of trains was *prima facie* evidence of negligence, yet the principles therein announced would seem to indicate the soundness of the contention of plaintiffs in error with reference to the unconstitutionality of that portion of section 1241 of the California Code of Civil Procedure now being discussed. In that case the court said:

> "That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law or a denial of the equal protection of the law, it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. So, also, it must not, under guise of regulating the presentation of evidence, operate to preclude the party from the right to present his defense to the main fact thus presumed. If a legislative provision not unreasonable in itself, prescribing a rule of evidence, in either criminal or civil cases, does not shut out from the party affected a reasonable opportunity to submit to the jury in his defense all of the facts bearing upon the issue, there is no ground for holding that due process of law has been denied him."

Tested by the principles announced in this quotation is not the said portion of section 1241 now being discussed unconstitutional?

First, because no provision is made whatever for any hearing before any tribunal, as to the "(a) public necessity of such proposed public utility, or public improvement; (b) that such property is necessary therefor, and (c) that such proposed public utility or public improvement is planned or located in the manner which will be most compatible with the greatest public good and the least private injury"; and

Second, because the section in question makes an arbitrary distinction when the resolution is adopted by a vote of two-thirds of all the members of the legislative body, and by a less number; and also when the land sought to be condemned is "located outside of the territorial limits" of the county, city or town, seeking to condemn the property.

In other words this law, in effect, provides that the legislative body of either of the political subdivisions, described in this section, may, by resolution, resolve to take certain property, and, provided two-thirds of its members vote for it, the owner shall not be heard to question the propriety of the taking; but if two-thirds of the members of such legislative body do not vote for the resolution, but only a majority do so, then he may be heard on all of the questions stated in the section.

Again, the same inconsistency and inequality in the law is shown by the last proviso of sub-

division two of section 1241 C. C. P. to the effect that the conclusive presumption does not apply, if the land sought to be condemned "lies outside the territorial limits" of the city, county or town, seeking to condemn. Why should a landowner *within* such territorial limits be subjected to burdens not imposed upon landowners *outside* the territorial limits of the political subdivision seeking to condemn? Is not this distinction "so unreasonable as to be a purely arbitrary mandate," as described in the opinion of the United States Supreme Court last cited? (Mobile etc. R. R. Co. v. Turnipseed, 219 U. S. Rep. 35.)

And does not the other distinction fall within the same classification, to-wit: when the resolution is passed by a vote of two-thirds of the members of the legislative body and when not? We think so, for it should make no real legal difference whether the resolution is adopted by a majority, or a two-thirds vote of its members, but the difference expressed in the law is fundamental. In the one case the landowner has guaranteed all the rights of a judicial investigation as to the public use, the necessity of taking the land therefor, and whether or not the improvement is located in a manner "most compatible with the greatest public good and the least private injury"; while, in the other, all of these questions are foreclosed by the adoption

of an *ex parte* resolution by a two-thirds vote, without any opportunity to be heard, either before the board, adopting the resolution, or by a court, upon a subsequent trial as to compensation. In effect, the law says: if the resolution is adopted by a two-thirds vote, all of the above questions of public use, necessity and location of the improvement are legislative, or political questions, upon which the landowner involved shall not be heard; but if the resolution is adopted by less than a two-thirds vote, or if the land is outside of the territorial limits of the county, city or town, then those questions are judicial in character and the landowner shall be heard in court, upon all of them.

It requires but a plain statement of the proposition involved to see that these distinctions created by the law in question are unreasonable and arbitrary, and sustain no rational connection "between the fact proved and the ultimate fact presumed." In the case at bar the only fact proved or required to be proved on these issues was the adoption of the resolutions by a two-thirds vote of all the mbers of the Board of Supervisors of Los ngeles county, and from this fact all of the issues, except as to compensation, were conclusively presumed in favor of the county.

If it be granted for the sake of the argument that the Legislature had the right to

"delegate to the boards of supervisors of the counties of the state the power to determine *ex parte* by resolution, as in the instant cases, the necessity for taking property for public uses," as was said in the opinion of the District Court of Appeal, yet it does not follow that it had the right to delegate such power to the boards of supervisors when two-thirds of their respective numbers should vote for the resolution, and withhold that power when the resolution is adopted by only a majority vote; because the effect would be, as we have seen, to make it a legislative question in the one case, and a judicial question in the other; dependent upon the size of the vote and also the location of the land sought to be condemned, to-wit: within or without the territorial limits of the county seeking to condemn.

It would be difficult to conceive of a more unequal application of the laws than would be not only possible, but probable under said section 1241, or a more flagrant denial of due process of law, where the land owners involved, as in the case at bar, happened to own the land within the territorial limits of the county, seeking to condemn, and the resolutions were adopted by a vote of more than two-thirds of the members of the Board of Supervisors of Los Angeles county.

In Luria v. United States, 231 U. S. 25, 58 L. Ed. 101, it was held that it was competent for Congress to declare that taking up a permanent residence in a foreign country within five years after the issuance of a certificate of citizenship, shall be considered *prima facie* evidence of the lack of intention of becoming a permanent citizen of the United States, at the time of the application for citizenship. In discussing the question the court said:

> "It will be observed that this provision prescribes a rule of evidence, not of substantial right. *It goes no further than to establish a rebuttable presumption which the possessor of the certificate is free to overcome.*" (Italics ours.)

The case of Mobile etc. v. Turnipseed, 219 U. S. 35 (cited *supra*) is quoted from at length in support of this proposition.

It is quite apparent from the reasoning in this case that the law would have been declared unconstitutional if, as in the case at bar, the fact had been declared, not *prima facie,* but conclusive evidence of the lack of intention to become a citizen.

It is plain to see that in the case at bar the legislative presumption declared by section 1241 was not merely a rule of evidence, creating a rebuttable presumption, but the provision in question created a conclusive presumption affecting a substantive right—the ownership and

continued possession of a strip of land about twenty-two miles in length, bisecting the Malibu Ranch, in a manner that inflicted upon the owners an irreparable injury.

In Turpin v. Lemon, 187 U. S. 51, 47 L. Ed. 70, the court said:

> "Exactly what due process of law requires in the assessment and collection of general taxes has never yet been decided by this court, although we have had frequent occasion to hold that, in proceedings for the condemnation of land under the laws of eminent domain, or * * * *notice to the owner at some stage of the proceedings is essential.*" (Italics ours.)

And the author of the article on this subject, in Ruling Case Law, stated the proposition as follows:

> "The due process clause, in addition to its requirement of public use and just compensation, protects the land owner from the adoption of any form of procedure in eminent domain cases, which deprives him of a reasonable opportunity to be heard, and so to present such objections and claims as he is entitled to make." (10 R. C. L. p. 17, Sec. 14.)

As we have seen, the law in question deprives the landowner of all opportunity to be heard on any of the fundamental questions recited in said section 1241, provided the resolution is adopted by a two-thirds vote of the members

of the city, county or town, and it clearly falls within the inhibition of the Federal Constitution, as construed in the authorities cited.

The different treatment accorded to the four classes described in said section 1241, namely: when the resolution is adopted by a two-thirds vote, and when not; and when the land sought to be condemned is within the territorial limits of the political subdivision seeking to condemn and when not, is not based upon any "consideration of difference" growing out of this classification, and hence is as purely mechanical or arbitrary as the ordinance condemned in the case of Gast Realty Co. v. Schneider Granite Co., 240 U. S. 55, 60 L. Ed. 523.

We fail to see any rational basis for a classification which gives to one landowner a judicial hearing, if his land is sought to be condemned, provided the resolution is adopted by only a majority vote, or is located outside the county, city or town; while another landowner is denied this right, and his land may be taken without any opportunity to be heard on any issue, except compensation, if, forsooth, the resolution happens to have been adopted by a two-thirds vote, and his land is located within the territorial limits of the political subdivision seeking to condemn.

In Hagar v. Reclamation District No. 108, 111 U. S. 701, 28 L. Ed. 569, the court said:

> "By 'due process' is meant one which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and whenever it is necessary for the protection of the parties, *it must give them an opportunity to be heard respecting the justice of the judgment sought.* * * *
>
> "Undoubtedly where life and liberty are involved, due process requires that there be a regular course of judicial proceedings, which imply that the party to be affected shall have notice and an opportuinty to be heard; *so also where title or possession of property is involved.*" (Italics ours.)

And the court then points out the difference between the requirements, where a general tax is involved, and the title or possession of specific property is in question, in order to satisfy the provisions of the due process article of the Federal Constitution, holding, of course, that the procedure for the assessment and collection of general taxes is necessarily very much less formal than in the other cases mentioned, and therefore the constitutional requirement is more easily satisfied.

It was said in King Tonopah Mining Co. v. Lynch, 232 Fed. 483, 494, that

> "we have no precise definition for due process of law. Its fundamental requisites, however, *are notice and the opportunity to be heard.*" (Italics ours.)

Citing in support thereof the following authorities:

Hovey v. Elliott, 167 U. S. 409, 418, 17 Sup. Ct. 841, 42 L. Ed. 215;

Louisville & Nashville R. Co. v. Schmidt, 177 U. S. 230, 236, 20 Sup. Ct. 620, 44 L. Ed. 747;

Simons v. Craft, 182 U. S. 427, 437, 21 Sup. Ct. 836, 45 L. Ed. 1165;

Twining v. New Jersey, 211 U. S. 78, 110, 29 Sup. Ct. 14, 53 L. Ed. 97.

This "fundamental requisite" was necessarily denied to the plaintiffs in error, because the *ex parte* resolutions, adopted by the Board of Supervisors, were under section 1241 C. C. P., and the opinion of the District Court of Appeal, *conclusive evidence* of all the issues involved, except the compensation to which they were entitled, after being assessed by the jury. They were denied the right to contest the necessity of taking the land for the proposed highway; or that it had been located in such a manner as to best serve the public interest, with the least private injury to them, and having been denied these fundamental rights, by express command of the section in question, it is difficult to see how it can be successfully contended that plaintiffs in error have not been deprived of their property without due process of law.

The only alternative to this conclusion is, that the state has the power, by legislative fiat, to determine that it will take certain property of its citizens for an alleged public use, without any hearing, except upon the issue of compensation, and if this is the law (which we deny) then there is no difference in the quality of such tyranny, and that asserted by the kings and queens formerly exercising rulership over us, against which tyranny our forefathers successfully waged battle in revolutionary days.

Our contention, therefore, leads us to this summary:

The law of California expressly provides that the public uses for which land may be condemned, as well as the necessity for the taking, and the location of the proposed improvement, are judicial questions; and being judicial questions, it was not lawful for the Legislature to declare that a resolution adopted by a board of supervisors by a certain vote, should be conclusive evidence of the fundamental issues involved, and thereby deprive plaintiffs in error of a hearing on these issues. Such a law, held to be valid by the District Court of Appeal of California (and approved by the Supreme Court of this state), has had the effect of depriving plaintiffs in error of their property without due process of law, and has caused them to be de-

nied the equal protection of the laws, in the particulars hereinbefore enumerated.

That the District Court of Appeal was in error in holding these questions to be legislative or political, and not judicial, is clear.

In Hairston v. Danville etc. R. Co., 208 U. S. 598, 52 L. Ed. 637, 641, the court said:

> "But when we come to inquire what are public uses for which the rights of compulsory taking may be employed, and what are private uses for which the right is forbidden, we find no agreement, either in reasoning or conclusion. *The one and only principle in which all courts seem to agree is that the nature of the uses, whether public or private, is ultimately a Judicial question.*" (Italics ours.)

It necessarily follows that if it is a judicial question, the judicial mind may not legally be controlled by the legislative declaration to the effect that upon certain contingencies named, a resolution adopted shall be conclusive evidence of all the facts upon which the judicial conclusion must rest.

To give this effect to such a provision would be to convert our judges into rubber-stamps, compelling certain findings, however obnoxious, in particular cases, those findings might be to the conscientious judge, and however contrary to his sense of justice. And even the U. S. Supreme Court cases (cited in the opinion of

the District Court of Appeal in support of its conclusion) do not go to the extent indicated. In Secombe v. Milwaukee & St. Paul Railway Co., 90 U. S. 108, 23 L. Ed. 67, the court said:

> "The judgment of condemnation in this case was rendered by a competent court, charged with a special statutory jurisdiction, and all the facts necessary to the exercise of this jurisdiction are shown to exist. A judgment thus obtained is no more subject to impeachment in a collateral proceeding than the judgment of any other court of exclusive jurisdiction."

It is true that a general rule is announced in this opinion for which it was doubtless cited, but the real decision is embodied in the above quotation.

In Miss. & R. River Boom Co. v. Patterson, 98 U. S. 403, 25 L. Ed. 206, the court explained, in effect, the respective functions of the legislative and judicial departments of government in the condemnation of land for public purposes. The court said:

> "The property may be appropriated by an act of the Legislature, or the power of appropriating it may be delegated to private corporations, to be exercised by them in the execution of works in which the public is interested. But notwithstanding the right is one that appertains to sovereignty, when the sovereign power attaches conditions to its exercise, the inquiry whether the conditions have been

> observed is a proper matter for judicial cognizance. If that inquiry take the form of a proceeding before the courts between parties, the owners of the land on the one side, and the company seeking the appropriation on the other, there is a controversy which is subject to the ordinary incidents of a civil suit, and its determination derogates in no respect from the sovereignty of the state."

That is exactly what the plaintiffs in error claim, namely, that the state of California has attached certain conditions to the right of any county to exercise the power of eminent domain and expressly declares that those "conditions" shall be found to exist before condemnation. In other words, "whether the conditions have been observed is a proper matter for judicial cognizance."

Because the Legislature also illegally attempted to control this judicial investigation by declaring a certain resolution to be conclusive evidence of the observance of these conditions, does not alter the fact, that the Legislature did delegate to the courts the power and the duty of ascertaining and finding the facts, necessary to be found, before the land involved in any condemnation suit could be condemned.

In the last analysis, therefore, the above authorities cited, in the opinion of the District Court of Appeal, do not sustain the broad conclusions therein reached, as applied to the case

at bar, but in principle sustain the contention of plaintiffs in error.

It follows that the conclusion of the appellate court was erroneous because it is based entirely upon the incorrect premise that in California the question of necessity for taking property under the power of eminent domain is exclusively a political or legislative question, and not a judicial one, and the premise being erroneous, the conclusion is equally erroneous.

And we could not more fittingly close the discussion on this branch of the subject than by a quotation from the opinion of Chief Justice Murray in the early case of Burgoyne v. Board of Supervisors of the county of San Francisco, 5 Cal. 9, found at page 20 of the opinion. He said:

> "The history of almost every nation is replete with struggles between the judicial, the executive, and legislative branches of government for unlimited supremacy, and demonstrates, that unless curbed by wholesome constitutional restrictions, each department will, in its turn, encroach upon and interfere with the functions of other co-ordinate branches of government. This spirit of usurpation and encroachment has been more frequently directed towards the judiciary than any other department. In England, it was only determined by resort to civil war, which resulted in the establishment of the entire independence of the judiciary, as well as the commons, while in this country, it has been avoided by the

enlightened wisdom and experience of the framers of our Federal and State Constitutions."

III.

The Holding of the Trial Court That the Resolutions Were Only Prima Facie Evidence of the Facts Recited Instead of Conclusive, Did Not Cure the Error, or Make the Amendment in Question Void as to Plaintiffs in Error.

The appellate court also holds that the plaintiffs in error were not injured because the trial court held that the resolutions offered in evidence were not conclusive, but only *prima facie* evidence of the truth of the essential facts, described in said section 1241 of the California C. C. P. [Tr. fols. 4278-4284]; but this argument we respectfully submit begs the question involved on this point.

The obvious answer to this contention is, that the resolutions in question were either conclusive evidence of the facts stated, or no evidence at all, because to hold otherwise would be in direct violation of the express terms of the code section involved herein. The authorities cited in discussing the next preceding question also support our argument on this, for the language of the section being clear, certain, and without ambiguity, cannot be modified or changed by

construction. In fact, there is no room for interpretation or for any conclusion except, that, upon the conditions named therein, the Legislature intended to make the resolutions conclusive evidence of the facts recited; and to arrive at the intention of the Legislature, is the cardinal rule for the construction of statutes.

Smith v. Randall, 6 Cal. 47.

And this intent must be found in the statute itself.

In Tynon v. Walker, 35 Cal. 634, the court, at page 642 of the opinion, said:

> "It is a universal principle of construction that courts must find the intent of the Legislature in the statute itself. Unless some ground can be found in the statute for restraining or enlarging the meaning of its general words, they must receive a general construction, and the courts cannot arbitrarily subtract from or add thereto."

When the trial court held that the resolutions in the case at bar were at least *prima facie* evidence of the recited facts when the statute says they were conclusive evidence of such facts, it violated the rule of statutory construction above stated, by arbitrarily "subtracting from or adding to" the statute in question.

It is obvious that the intent of the trial court to thus limit the effect of section 1241 C. C. P. was to avoid the constitutional objections to

the validity of that section, as heretofore discussed, and it was for this reason that the trial judge adopted this construction, he frankly expressing the opinion that the statute would be unconstitutional in a case where the landowner was not given a previous opportunity to be heard before the board of supervisors, when his land was about to be condemned for highway purposes, as by the regular viewer method. [Tr. fols. 683-685 and 4029-4037.] But our contention is that it is not permissible to violate the plain and unambiguous terms of a statute in order to remove the objection of unconstitutionality. It is only when the language is doubtful, and one construction will lead to the conclusion that it is constitutional, and the other to the conclusion that it is unconstitutional, that it is permissible to resolve the doubt in favor of the construction showing the statute to be constitutional. But this is the limit of the rule as appears from its statement in the case of San Francisco v. Insurance Co., 74 Cal. 113, where at page 120 the court said:

> "Laws are not to be declared unconstitutional unless clearly so; and if two constructions are possible, and according to one the law must be held unconstitutional, and under the other construction it can be sustained, that construction must be adopted which will sustain the law. The principle is not disputed, and it is often of great value, but it must not be pressed so far as

> to amount to an abdication of its functions on the part of the court, nor a denial of justice to suitors. If we can clearly see that a law is beyond the power of the Legislature, we must so declare."

See also:

Burns v. Superior Court, 140 Cal. 1, 8.

If, therefore, as appellants contend, section 1241 was and is unconstitutional, if applied to the so-called direct method of commencing proceedings for condemnation of land for highway purposes, this result can not be changed by an arbitrary construction, doing violence to the express terms of the statute.

In the Mills Estate, 137 Cal. 298, 303, it was held:

> "Where the law makes a certain fact a 'conclusive presumption' *evidence cannot be received to the contrary.*" (Italics ours.)

And if the court erred in holding that the presentation of the resolutions created a *prima facie* presumption of the truth of the facts necessary to be found by the court before property can be taken (C. C. P., Sec. 1241), which the defendants were required to rebut by "clear and convincing proof to the contrary" [Tr. fol. 4037], then the motion for a nonsuit should have been granted.

Assuming, however, for the purposes of this branch of the argument, and in considering

the error in denying the motion for a non-suit, that the resolution which purports to authorize the bringing of this action is one that the supervisors had jurisdiction to pass, then, as it was purely ex *parte,* without notice or hearing of any kind, we maintain that it had no greater or other effect (if it had any effect at all) than to merely pass on to the Superior Court the determination of *all of the* questions which the law requires the county to establish —which "must appear" — "before property" sought to be condemned "can be taken."

Sec. 1241, C. C. P.

Further, if these matters (and we have already enumerated them) "must appear" as a condition precedent to the taking of the property, then the burden of proving each and every one of them *to the court* by a preponderance of the evidence rested upon the plaintiff, and the court erred in shifting to the defendants (*without taking any evidence concerning them*) the burden of disproving them.

The record proceedings in this regard are as follows:

"Mr. Burnell: Then, if Your Honor please, we will offer certain resolutions; we desire to offer in evidence a resolution found on page 344, volume 17, road book of Los Angeles county, the same being a resolution which is set forth in the complaint in the main or Malibu

road case (No. B-43572). The resolution being one that purports to have been adopted at a meeting of the board of supervisors of Los Angeles county held on the 26th day of August, 1916, and the record shows on the face of it that the resolution was carried by a vote of all the supervisors, the notation being as follows: 'On motion of Supervisor Hinshaw, duly seconded and carried by the following vote, ayes, Hamilton, Norton, Woodley, Hinshaw and Pridham—noes, none. It is ordered that the following resolution be and is hereby adopted.' Then follows the resolution.

"Mr. Anderson: We waive the reading of the resolution." [Tr. fols. 667-669.]

This was the resolution in the "Main Road" case.

Continuing:

"The next offer, if the court please, is the resolution of the board of supervisors, passed on the 3rd day of December, 1917, being at a regular meeting of the board of supervisors, of Los Angeles county, held on that date, being found in road book No. 19, commencing on page 77, being the resolution authorizing the condemnation of land for the right-of-way for the road we have referred to as the Los Alisos road (in case No. B-59443).

"Mr. Anderson: We have no objection to it being deemed read, we only object to his saying that it was 'Authorizing.' We will substitute for that, 'Purporting to authorize.'

"Mr. Burnell: I am reading the title out of the book.

"Mr. Anderson: They may be deemed admitted on the same objection, as we made to the resolution in the main case.

"Mr. Burnell: It is the original resolution of condemnation and we desire at this time in connection with that to read this part: 'On motion of Supervisor McClellan, duly seconded and carried by the following vote, ayes, Woodley, McClellan, Dodge and Hamilton; noes, none; it is ordered that the following resolution be and the same is hereby adopted.' And then follows the resolution as set forth in the complaint in the Los Alisos Canon case." [Tr. fols. 676-678.]

This was the entire evidence in chief of the plaintiff.

Continuing:

"Mr. Anderson: Have you rested?

"Mr. Burnell: Yes, we have rested.

"Mr. Anderson: If the court please, we wish to move for a non-suit on the ground that the plaintiff in this action has failed to prove the facts which section 1241 of the Code of Civil Procedure must be made to appear before the plaintiff can condemn the property.

"*First*—That they have failed to prove that the taking is necessary to the use in question, namely: highway purposes.

"*Second*—That they have failed to prove the public necessity of such proposed public utility or public improvement.

"*Third*—That they have failed to prove that such property which it is proposed to be taken is necessary therefor.

"*Fourth*—That they have failed to prove that such public utility or public improvement is planned or located in the manner which would be most compatible with the greatest public good and the least private injury.

"Without arguing the matter, I will simply state that our position is simply this: That if

the proviso in section 1241 (C. C. P.) is, as we contend and as Your Honor has in a sense held, unconstitutional, there is nothing else in the statute which makes the resolution on which they rely—makes it *prima facie* evidence. In other words, the statute seems to contemplate that while the resolution can be adopted, the matters to be determined that I have just enumerated, are to be determined by the court, and there is nothing which makes the resolution itself, so far as I can find in the law, *prima facie* evidence. In other words, eliminating that proviso, the law simply stands that the burden is on the plaintiff to make these facts appear before condemnation can be had.

"The Court: The motion for judgment of non-suit will be denied." [Tr. fols. 681-685.]

This situation thus disclosed speaks for itself.

Without any authority of which we are aware to support its ruling, the court accepted these *ex parte* resolutions as not only *prima facie* evidence of the alleged *facts which they recite,* but as *prima facie* evidence that the Board of Supervisors *had considered,* and, at least *prima facie* determined, other of the necessary vital and fundamental facts required by law to be established, *but upon which the resolution itself is silent.*

The effect of this ruling was to hold that the proviso adopted by the Legislature did not mean what it said, and yet that the resolutions, while not conclusive of the facts, did in effect *prima facie* establish all the material allegations of the complaint, and shifted the burden

of disproving the presumption raised thereby to the plaintiffs in error.

And the appellate court, while holding that the trial court was in error in its ruling that the resolutions were only *prima facie* evidence of the facts specified, in section 1241 C. C. P., instead of conclusive evidence of those facts, held that the defendants in that case, plaintiffs in error herein, were not prejudiced by the ruling because the parties were permitted to introduce evidence on the issue of necessity. But the error in denying the motion for a nonsuit, based upon the fundamental objection to the effect given to these resolutions, adopted by the Board of Supervisors of Los Angeles county, was not cured by the subsequent introduction of testimony.

It is conceded that if a motion for a nonsuit is erroneously denied, and thereafter during the trial the defects are supplied by evidence introduced by either party that the error committed in overruling the motion is waived (Lowe v. S. F. etc. Ry. Co., 154 Cal. 573, 576, and cases cited), but the error committed by the trial court on this question went beyond the overruling of appellants' motion for a nonsuit. The trial judge held, as we have seen, that the resolutions when introduced in evidence created a presumption of the truth of the facts necessary for the court to find before the land of

appellants could be taken, which presumption could be "overthrown only by clear and convincing proof to the contrary" [Tr. fol. 4037], introduced by the defendants, thereby reversing the usual rule that the burden of proof is and was upon the plaintiff to establish all the facts necessary to entitle plaintiff to the relief sought. This error was not waived by the production of evidence by either party upon the issues prescribed by section 1241 C. C. P., because the reason for the waiver would not apply to such a situation. When defects in the proof existing at the time a motion for a nonsuit is made are subsequently supplied, it is quite plain that it would be a highly technical rule to hold that the first error in overruling the motion for a nonsuit was not cured by the evidence thereafter admitted; but, in the case at bar, the error of which appellants complain persisted to the end of the trial because the trial judge not only denied the motion for a nonsuit, but based his decision of the public necessity, etc., for the road, at least in part upon the consideration that the appellants had not met the "burden of overthrowing and removing the presumption" created by the introduction of the resolutions in evidence, "by clear and convincing proof to the contrary." [Tr. fols. 4036-4037.] If we are correct in our contention that no such presumption existed in the case at bar, for the reasons

stated, it follows that an attempt by appellants to meet the burden of proof imposed by the court by this ruling, did not constitute a waiver of such error.

See:

Koyer v. Willmon, 12 Cal. App. 87.

It appearing in the record that the court did shift the burden of proof from the plaintiff to the defendants, we have the right to assume that the findings as to public necessity and location of the roads in question would have been different but for the constant pressure of this erroneous ruling, imposing the burden upon the defendants to rebut the *prima facie* case alleged to have been proven upon the production of the resolutions adopted by the Board of Supervisors of Los Angeles county. In other words, the resolutions were either conclusive evidence of the facts stated in section 1241 C. C. P. or were no evidence at all, and the ruling of the court that they established a *prima facie* case for plaintiff, which shifted the burden of proof upon those issues to the defendants, was wholly unwarranted by the section in question, or by any principle of law, and was and is prejudicial error, even though evidence was subsequently offered by plaintiff and defendants on those issues, upon which the court was expressly required by law to make findings. *Non constat*

but for this erroneous ruling as to the burden of proof, the findings on such issues would have been in favor of appellants as to all of the proposed roads, instead of in favor of respondent.

This error was very prejudicial to the plaintiffs in error.

In Spring Valley Water Co. v. Drinkhouse, 92 Cal. 528, 532, the court said:

> "There is no doubt of the proposition, that before land can be taken for a public use it must appear that the taking is necessary for such use. This is a question of fact to be determined by the court or jury in view of all the evidence in the case, and the burden of proof is upon the plaintiff."

In the case of City of Santa Ana v. Gildmacher, 133 Cal. 395, the court said:

> "In an action to condemn private property for a public use, the question of necessity is one of fact, to be determined by the jury, in view of all the evidence in the case. (Spring Valley Water Works v. Drinkhouse, 92 Cal. 528.) The evidence should show that the land is reasonably required for the purpose of effecting the object of its condemnation. (Spring Valley Water Works v. Drinkhouse, 92 Cal. 528.) I think that the court invaded the functions of the jury in directly a verdict for the defendant. The court took from the jury the principal issue of fact in the case, and in so doing made all other issues immaterial. The court charged the jury

in respect of matters of fact, in the sense of the constitutional prohibition. If there had been no evidence tending to show a reasonable necessity for taking defendant's property, it would not have been prejudicial error for the court to grant a nonsuit (*In re* Spencer, 96 Cal. 448); or if the evidence had been such as that a verdict for plaintiff would have been contrary to the evidence, the error would be regarded as immaterial (Levitzky v. Canning, 33 Cal. 299); but we think there was evidence of a substantial character bearing directly on the issue of fact,—namely, the necessity for taking the property,—and as this issue was for the jury, it ought to have been left for them to decide * * *. The question of public necessity in a given case involves a consideration of facts which relate to the public, and also to the private citizen whose property may be injured. The greatest good on the one hand and the least injury on the other are the questions to be determined, and these questions are for the jury, in passing on the question of necessity. The jury may as safely be trusted to rightly solve these questions as the court, and whether so or not, our system of jurisprudence requires that they shall first be submitted to the jury."

Another patent error resulting from this ruling of the trial judge, approved by the appellate court, was that while the trial judge held that the questions of necessity and proper location of the proposed highways were in this case judicial questions, *yet he gave to the resolutions the effect which they could only have had,*

if those questions were in fact held to be legislative or political in character. To make this point clear, we quote an excerpt from the decision of the trial court on the question of necessity:

"The county of Los Angeles instituted the above numbered three separate special proceedings to condemn for public use, to-wit, for road purposes, certain property of the defendants aforesaid. The property sought to be condemned lies entirely within the Rancho Malibu, is situated in the county of Los Angeles, state of California, and consists of three strips of land each forty feet in width, and sufficient contiguous parcels of land at the sides of said strips to build three roads, each to grade twenty-two feet wide. The proceedings, while not consolidated, were, by agreement of the parties, tried simultaneously. For convenience they have been called throughout the trial, 'The Main Malibu Road Case,' 'The Los Alisos Road Case' and 'The Beach Road Case,' respectively. A jury was regularly impaneled and in each case the issues of compensation for the taking of said property have been determined by said jury by special findings made and filed herein. There remain three questions for decision by the court. These questions are: First, whether there existed public necessity for the proposed roads at the respective times when the Board of Supervisors regularly passed resolutions of necessity and directed the county counsel to begin condemnation proceedings; second, whether the proposed roads are planned or located in the manner which will be most compatible with the greatest public good and the least private injury.

"These questions usually in eminent domain proceedings are determined by the legislative branch of government and when regularly determined by it, are not thereafter subject to judicial inquiry or review; but inasmuch as it is conceded that the Board of Supervisors in each of these cases have failed to pursue the course required by sections 2681 and 2698 inclusive of the Political Code, which is the usual method adopted by counties in laying out new roads and taking property necessary therefor, *we have held during the trial that they become judicial questions in each of these cases.*" (Italics ours.)

If the trial court was correct in holding that the questions stated were judicial in character, then it was wholly inconsistent with this ruling to hold that the resolutions introduced in evidence proved anything, except, perhaps, that the condemnation proceedings were duly authorized by the Board of Supervisors, and that they contained a description of the land sought to be condemned. Having held the stated questions to be judicial, the facts were required to be proven as other facts, in trials of causes, and not by a resolution adopted by a political subdivision of the state. This distinction was pointed out in the case of Madera Ry. Co. v. Raymond Granite Co., 3 Cal. App. 668, 674-5, in which case the court held that where the special procedure for establishing highways is followed (Cal. Pol. Code, Sec. 2681 *et seq.*) jurisdiction is acquired to determine these ques-

tions, and they are not subject to judicial review, *but where the special procedure is not followed, and the condemnation proceedings are prosecuted under general laws, then all the questions necessary to be determined are judicial, and the facts must be established in the well recognized way.*

One of the cases cited in the opinion last cited is Wulzen v. Board of Supervisors, 101 Cal. 15, which case is also cited by the District Court of Appeal, in support of the decision in the instant case, but, when rightly considered, it supports the contention of plaintiffs in error; for it held that the Board of Supervisors of San Francisco exceeded its powers in the resolution of intention for the condemnation of land to open Market street, because it encroached upon the judicial functions of the court, and the judgment of the lower court, upon the application for a writ of review, sustaining the action of the said board, was reversed by the Supreme Court of the state of California.

The conclusion inevitably follows that the trial court correctly decided that the questions of necessity, etc. (quoted *supra*) were judicial questions, under the California law, and the District Court of Appeal erroneously decided to the contrary; and the trial court having correctly held the said questions to be judicial, in-

correctly gave the same effect to the resolutions adopted by the Board of Supervisors, as if the questions quoted were legislative, or political in character, by declaring them *prima facie* proof of the facts required to be found, and shifting the burden of rebutting the presumption raised thereby to the plaintiffs in error.

That the citizen should not be compelled to give up his property, even though compensated therefor, except where the public necessity requires it, is elementary and in California this question must be determined by the courts, upon competent evidence, and not by resolutions adopted by boards of supervisors. This right is clearly set forth in the case of Commonwealth v. Sawin, 2 Pick. (Mass.) 547, as follows:

> "Every citizen through whose land the road may pass, and who therefore may be subjected to the inconvenience of having his farm, house, lot or garden spot taken from him for this purpose, has a right to require that he be not disturbed in these enjoyments, except the public common convenience or necessity require it. It is true he may be compensated in money for his loss of the pecuniary value of his property; but by the principles of our government, no man's property can be taken from him, even if he is paid for it, without his consent, except it is actually wanted for public use. It often happens that there is a value, in the owner's eye, of particular spots of ground, which no compensation in money

> will be deemed an equivalent for. Where the public necessity or convenience demands, he must surrender his favorite field or flower-garden for its value in other men's eyes, but until then he has a right to cherish his prejudices, and even his whims, in relation to his property. So that even if the town and the individuals who want a road through it should concur in this application to the Court of Sessions, he ought not to be disturbed, unless it can be honestly adjudged that the public interest demands the sacrifice. (Op. pp. 547-548.)"

The courts (Superior and Appellate) permitted the judgment of the Board of Supervisors to be substituted for their judgment on this fundamental question and did not actually adjudicate that the "public interest demands the sacrifice" of this property by the plaintiffs in error.

We conclude, therefore, that the trial court was not justified in holding that the resolutions were *prima facie* evidence of the facts required to be found in condemnation proceedings, and that the fourth question should be answered in the negative.

IV.

Plaintiffs in Error Have Been Deprived of Their Property Without Due Process of Law and Have Been Denied the Equal Protection of the Laws, in Violation of the Fourteenth Amendment to the Federal Constitution.

The fifth question has already been answered, for if the preceding argument is sound and supported by the authorities cited, it follows that the owners of the property involved in these condemnation suits have been deprived of their property without due process of law, and have been denied the equal protection of the laws, as guaranteed by the fourteenth amendment to the Federal Constitution.

In the opinion of the District Court of Appeal, excerpts from the opinions in Board of Water Commissioners v. Johnson, 84 Atl. 727, and Wulzen v. Board of Supervisors, 101 Cal. 15, are quoted, to the effect that the determination of the question of whether or not the right of eminent domain should be exercised, and what lands are necessary to be taken, in the exercise of that right, is a political and legislative question and not a judicial one, and that therefore owners of such property are not denied due process of law because no hearing on these questions has been provided for. But the

fallacy of this argument as applied to the case at bar, as we have attempted heretofore to demonstrate, is, that in California, these essential questions are expressly made judicial questions, not only by the code sections cited (C. C. P. 1241 *et seq.*), but also by the amendment of 1918 to article I, section 14 of the California Constitution (quoted *supra*). And, having made these questions judicial, by these statutory and constitutional provisions, the Legislature, in its attempt to make the *ex parte* resolutions of a political subdivision of the state conclusive evidence as to these essential facts, without any hearing at all being provided for, did have the effect of depriving plaintiffs in error of their property without due process of law, and denying to them the equal protection of the laws; because by well settled practice, all judicial questions must be determined by the courts, upon competent evidence, and with the untrammeled power to hear and determine the law and the facts, without dictation by the legislative department of government.

And the fact that the trial court, from an innate sense of justice, felt compelled to accord to the plaintiffs in error a hearing on the question of necessity, does not answer our contention that they were deprived of their rights guaranteed by the Federal Constitution. For what was granted was, according to the ap-

pellate court, a matter of grace and not of right, and hence the ultimate decision rested upon the effect given to the *ex parte* resolutions of the Board of Supervisors of Los Angeles county. In other words, the question here being discussed must be determined upon the effect of the proviso to section 1241 of the California Code of Civil Procedure, as it reads and as construed by the District Court of Appeal, rather than by the attempt of the trial judge to "temper the wind to the shorn lamb," by permitting, *ex gratia,* evidence as to the necessity for taking the land described in the complaints, for the proposed roads, upon the theory that the resolutions were only *prima facie* evidence of the facts required to be found, because there had been no previous hearing of any kind given to the owners of the land on these vital questions.

As was said by Judge Earle in Stuart v. Palmer, 74 N. Y. 183, (cited with approval by Mr. Justice Matthews in Spencer v. Merchant, 125 U. S. 345, 31 L. Ed. 763, 768):

> "It is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. The law must require notice to them and give them a right to a hearing, and an opportunity to be heard. It matters not, upon the question of the constitutionality of such a law, that the assessment has in fact been fairly

> apportioned. The constitutional validity of law is to be tested, *not by what has been done under it, but by what may by its authority be done.* The Legislature may prescribe the kind of notice, and the mode in which it shall be given, but it cannot dispense with all notice." (Italics ours.)

See also the following authorities to the same effect:

> Matter of Lambert, 134 Cal. 626, 634, and cases cited.

The proviso to section 1241 of the California Code of Civil Procedure, as we have already pointed out, imposes special rules of evidence affecting substantive rights upon defendants, in condemnation cases, when the land is located within the territorial limits of the political subdivision seeking to condemn, and the resolution is adopted by a vote of two-thirds of its members radically different from the conditions imposed when the land is located outside of said territorial limits, and the resolution is adopted by less than two-thirds of the members of the governing body of said political subdivision.

It has been decided many times in California that such invidious distinctions are unconstitutional and we cite by way of illustration some of these authorities.

In City of Pasadena v. Stimson, 91 Cal. 238, the court held that a law requiring cities of the

sixth class to make an effort to agree with the owner for the purchase of his land as a condition of commencing a condemnation suit was unconstitutional, because it did not impose a similar condition upon other cities or persons who were authorized to acquire land, by condemnation, for a public use. And the conclusion was stated as follows:

> "The conclusion is, that although a law is general and constitutional when it applies equally to all persons embraced in a class founded upon some natural or intrinsic or constitutional distinction, it is not general or constitutional if it confers particular privileges or imposes peculiar disabilities or burdensome conditions, in the exercise of a common right, upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law."

In Builders Supply Depot v. O'Connor, 150 Cal. 265, the court held that a California statute allowing an attorney's fee to the plaintiff in a mechanic's lien suit, but none to the defendant, even though successful, was a violation of the state constitution as well as the fourteenth amendment to the Federal Constitution quoting from the case of Gulf etc. Ry. Co. v. Ellis, 165 U. S. 170 (41 L. Ed. 666), as follows:

> "It is simply a statute imposing a penalty upon railroad corporations for a failure to pay certain debts. No individuals

> are thus punished, and no other corporations. The act singles out a certain class of debtors and punishes them when for like delinquencies it punishes no others. They are not treated as other debtors, or equally with other debtors. They cannot appeal to the courts as other litigants under like conditions and with like protection. If litigation terminates adversely to them, they are mulcted in the attorneys' fees of the successful plaintiff; if it terminates in their favor they recover no attorneys' fees. It is no sufficient answer to say that they are punished only when adjudged to be in the wrong. They do not enter the courts upon equal terms. They must pay attorneys' fees if wrong. They do not recover any if right; while their adversaries recover if right and pay nothing if wrong. In the suits, therefore, to which they are parties they are discriminated against, and are not treated as others. They do not stand equal before the law. They do not receive its equal protection. All this is obvious from a mere inspection of the statute."

And many other cases are reviewed in the opinion last cited, showing many types of discrimination declared to be unconstitutional, and the principle decided, and the cases cited, in the opinion, are conclusive in the case at bar.

Apply these principles to section 1241 of the California Code of Civil Procedure, and we at once see that it is subject to the same criticisms. This section singles out the landowner who owns land in a certain locality, and when the resolution of a certain political subdivision of the

state is adopted by a two-thirds vote of its governing body, and denies to such landowner any hearing whatever upon the vital facts catalogued in the said section, whereas, as to all other persons whose land may be condemned for public purposes, they are accorded a hearing by the court without any presumptions whatever against them. In the language of the Supreme Court of the United States in the case last cited,

> *"They do not stand equal before the law. They do not receive its equal protection. All this is obvious from a mere inspection of the statute."* (Italics ours.)

In *Ex parte* Sohncke, 148 Cal. 262, 113 Am. St. Rep. 236, the court held that a law fixing rates of interest and charges on chattel mortgages secured by certain specified kinds of personal property, and prescribing penalties for a violation thereof, was a violation of the California Constitution as well as the Federal Constitution; citing in support thereof:

> Connolly v. Union Sewer Pipe Co., 184 U. S. 563, 46 L. Ed. 679,

which very clearly enunciates principles and reviews authorities which, when applied to the case at bar show that the amendment of 1913 to section 1241 was and is in contravention of the Fourteenth Amendment to the Federal Constitution in that it denies to plaintiffs in error

and others in like position the equal protection of the laws.

It also follows from this conclusion that the judgments of condemnation entered in the case at bar should be reversed, for the judgment of the Appellate Court, affirming these judgments of the trial court, was predicated upon the validity of this amendment to said section 1241, C. C. P. That section, before the Amendment of 1913, required the court to find as a fact before it could condemn land: "(1) That the use to which it is to be applied is a use authorized by law; (2) That the taking is necessary to such use." And section 1242 of the California Code of Civil Procedure also required that the state and its agents who may exercise the right of eminent domain shall locate the improvement "in the manner which will be most compatible with the greatest public good and the least private injury," which, of course, was another issue of fact upon which the landowners had the right to be heard before the enactment of the amendment of 1913 to section 1241, which denied them that right, by declaring the *ex parte* resolutions of the agent seeking to condemn, *conclusive evidence* upon all of those fundamental and essential questions of law and fact, which the court was required to find "before condemnation."

The result, therefore, is as we contend, that the amendment in question is unconstitutional and void, and the section, as it existed before the amendment is the law which should have been applied to the case at bar, and not having been done, the judgments should be reversed.

Conclusion.

In conclusion the plaintiffs in error most respectfully contend that their rights of property, guaranteed to them by the Constitution of the state and the Nation, have been violated, and their property taken without due process of law, and that they have been denied the equal protection of the laws as herein specifically set forth. Their property has been taken without due process of law:

1. Because no hearing was provided by law before the Board of Supervisors, on the questions of the public use; the necessity for taking the property for that use, and whether or not the proposed highways were located in the manner most compatible with the greatest public good and the least private injury;

2. Because they were also deprived of any hearing on these vital issues, before the court by the amendment of 1913 to section 1241 of the California Code of Civil Procedure, which declared the *ex parte* resolutions of the Board

of Supervisors (if adopted by a two-thirds vote) conclusive evidence of the essential facts involved.

3. Because the issues required to be determined before the land of plaintiffs in error could be taken, were and are judicial questions, under the Constitution and laws of California, and the amendment in question, sought to, and did, control the judicial discretion by the illegal and unwarranted declaration as to the effect of the resolutions adopted by the Board of Supervisors, thereby in effect taking their property by legislative decree, rather than by the judgment of a court, as required by the law of California, before the adoption of the amendment, and since, by the Constitutional Amendment of 1918.

4. Because it affirmatively appears from the record that the proposed roads were not required for a public use, or authorized by law, in that they were located exclusively upon private property "without outlets or feeders of any kind or character," and were located "wholly and solely upon and give access wholly and solely to the private ranch property of the defendants May K. Rindge and Rindge Company; and would not and could not furnish any way of necessity or convenience to the general public or for public use or travel." [Tr. fols. 311-312.]

5. And the plaintiffs in error were and are denied the equal protection of the law in that if any of the agents of the state sought to condemn land outside of the territorial limits of the particular political subdivision seeking to condemn, or, if the resolutions of condemnation were passed by less than a two-thirds vote, then all of the issues referred to in section 1241, C. C. P., would be judicial questions and determined upon evidence duly offered upon the trial; while all landowners (including plaintiffs in error herein) not within the specified classes, would have their rights conclusively adjudicated by the adoption of the *ex parte* resolutions, without any hearing, either before the said political subdivision (Board of Supervisors in the instant case) or the court having jurisdiction of the case.

Unless we are to adopt the maxim that the Legislature (as the supposed representative of the people) can do no wrong (after we have repudiated the outworn maxim of royalty that the king can do no wrong) it seems to us that this amendment of 1913 to section 1241 is a plain usurpation of authority, which had the effect of causing an arbitrary decree to be entered, depriving plaintiffs in error of their property without due process of law, and denying to them the equal protection of the law guaranteed by the Fourteenth Amendment to the

Federal Constitution. And for these manifest errors, plaintiffs in error respectfully request that the judgments of condemnation entered in the two cases involved herein, be reversed, and that all proceedings taken thereunder be declared null and void.

Respectfully submitted,

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Office Supreme Court, U. S.
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IN THE

Supreme Court of the United States

No. 237.

RINDGE COMPANY, A CORPORATION; MAY K. RINDGE, HUENEME, MALIBU & SOUTHERN RAILWAY, A CORPORATION, AND HUENEME, MALIBU & PORT LOS ANGELES RAILWAY, A CORPORATION,
Plaintiffs in Error,

vs.

COUNTY OF LOS ANGELES,
Defendant in Error.

RINDGE COMPANY (A CORPORATION),
Plaintiff in Error.

vs.

COUNTY OF LOS ANGELES,
Defendant in Error.

REPLY BRIEF OF PLAINTIFFS IN ERROR.

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IN THE

Supreme Court of the United States

No. 237.

RINDGE COMPANY, A CORPORATION; MAY K. RINDGE, HUENEME, MALIBU & SOUTHERN RAILWAY, A CORPORATION, AND HUENEME, MALIBU & PORT LOS ANGELES RAILWAY, A CORPORATION,

Plaintiffs in Error,

vs.

COUNTY OF LOS ANGELES,

Defendant in Error.

RINDGE COMPANY (A CORPORATION),

Plaintiff in Error.

vs.

COUNTY OF LOS ANGELES,

Defendant in Error.

REPLY BRIEF OF PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

As has heretofore been stated, the record in this case embraces two separate appeals, being two separate condemnation actions, No. B-43572 and No. B-59443, respectively (Tr., Vol. I, Fols. 1-119 and 553-577). Both of these cases were by stipulation of the

parties and by order of the court tried at the same time, but not consolidated. (Tr., Vol. 1, Fol. 642.)

Another case, No. 65893, is referred to in the stipulation, but was decided in favor of these plaintiffs in error and need not be further considered.

In the court of first instance the plaintiffs in error raised the question of the constitutionality of Section 1241 of the California Code of Civil Procedure, which section is set out in full at pages 66-68 of the opening brief of plaintiffs in error. That question was raised by a special defense in the amended answer of May K. Rindge, which special defense alleged in substance that the proposed roads were located entirely upon private property, were not a public necessity, and that the condemnation would be for private purposes and in contravention of the provisions of the Constitution of the United States and particularly in violation of the Fourteenth Amendment to the Constitution of the United States and would be void and without due process of law and would constitute a denial to the defendants of the equal protection of the laws. (Tr., Vol. I, Fols. 303-315.) The same defense was alleged in the amended answer of the Rindge Company. The County of Los Angeles, the original plaintiff and the present defendant in error, moved to strike out this special defense "upon the grounds and for the reason that all of the matter asked to be stricken out and each of the separate matters, is irrelevant and immaterial and constitutes mere surplusage and conclusions of law of the pleader and none of the matters asked to be stricken out, are matters of fact, ultimate or otherwise, nor are any of them allegations upon which the court would have the right or the power to receive evidence." These motions of the plaintiff were

granted and the special defenses referred to stricken out (Tr., Vol. I, Fols. 654-660). The action of the court of first instance in so striking out these special defenses was affirmed by the District Court of Appeal, Second Appellate District, Division One (Tr., Vol. III, Fols. 4282-4289).

It is of the utmost importance, for a full understanding by the court of the facts involved in these cases, that the situation of the property involved and something of its previous history should be clearly set out. The property through which condemnation is sought to be made is that known as the Malibu Ranch, which is an oblong shaped piece of ground along the shore of the Pacific Ocean, approximately twenty-two miles in length and varying in width from one-half mile to one and one-half miles. In this vicinity the line of the coast runs almost exactly east and west, not north and south. The road sought to be condemned in the "Main Road" case runs directly through this long and narrow strip of land and ends at the county line where Los Angeles County stops and Ventura County begins. It is admitted that there is no connection in the way of a public road or highway at present in Ventura County and it is not claimed in the record that any such road is contemplated. The road sought to be condemned in the "Alisos Canyon Road" case is a branch from the so-called "Main Road" running in a general northerly direction to the boundary line of the ranch on the north, and there is no connection by public road or highway with the said proposed Alisos Canyon road at that point or at any point near the end of the said road. The evidence of these conditions is scattered throughout the entire record, but it is not considered necessary to refer to

the many instances where the evidence is set out because, as heretofore stated, these facts are not disputed by the defendant in error.

Having in mind the location and general nature of the ranch property and the location of the roads proposed to be built on that property, it is interesting to note that the present litigation is only a part of a long series. The present litigation may be said to have had its inception with the passage of the resolutions by the Board of Supervisors of Los Angeles County, which resolutions are referred to in the record. (Tr., Vol. I, Fols. 9-48.) These resolutions were passed on August 26, 1916. The condemnation proceedings themselves were begun by the filing of the Complaint, October 18, 1916.

On December 3, 1907, there had been instituted in the District Court of the United States for the Southern District of the State of California, Southern Division, Case No. 1379, entitled, "United States of America vs. M. K. Rindge as the executrix of the estate of Frederick H. Rindge, deceased, *et al.*" The object of that suit, as stated by the district judge in his opinion, was to obtain a decree enjoining and restraining the defendant from maintaining certain fences or obstructions, on the grounds (1) that the Beach Road and the roads used by the settlers up the various canyons are public highways and necessary for access to government lands; (2) that at the time the defendants obtained title to the ranch property there was reserved by implication title to the government and its grantees a right of way over the defendant's land; (3) that the construction and maintenance of the fences in question, though on the defendant's own land, constituted an unlawful en-

closure of public lands within the meaning of the Act of Congress of February 5, 1885. (Tr., Vol. I, Fols. 772-774.) A restraining order was issued December 4, 1907, and was continued in force until final decision of the case, which decision was made October 27, 1913, resulting in a decree dismissing the Bill of Complaint after an opinion of the court sustaining all the contentions of the defendants and overruling those of the government.

On December 16, 1907, there was instituted in the Superior Court of the State of California in and for the County of Los Angeles, a suit entitled, The People of the State of California vs. May K. Rindge, testatrix (executrix) of the estate of Frederick H. Rindge, deceased, *et al.* (Tr., Vol. II, Fols. 2747-2748.) That cause came on for trial October 6, 1908, and resulted in a finding in favor of the people and the existence of a certain public road or highway in the County of Los Angeles extending from the city of Santa Monica in a northwesterly direction, along the shore of the Pacific Ocean, to the Ventura County line. May 2, 1910, a decree was signed which embodied the findings above set out. (Tr., Vol. II, Fols. 2754-56.) This decree contained an injunction restraining the defendants and all persons claiming under them from asserting or claiming any right, title and interest in the road adverse to the people of the State of California. An appeal was taken by the defendants to the Supreme Court of California, and on April 7, 1917, that Court rendered an order reversing the order of the lower court which denied a new trial. The injunction had remained in force from May 2, 1910, to April 7, 1917. (Tr., Vol. II, Fols. 2757-61.)

ARGUMENT.

The facts being as above set out and being in each instance undisputed, it is now necessary to take up in order the points relied upon by the defendant in error, which are four in number:

"First: That this court is without jurisdiction.

Second: That the California Code of Civil Procedure, Section 1241, as amended in 1913, is not repugnant to the due process of law clause of the Federal constitution.

Third: Plaintiffs in error were not denied the equal protection of the law.

Fourth: The striking out of the special defenses did not prevent plaintiffs in error from raising the question whether the land sought to be condemned was being taken for a public use authorized by law."

There is a clear-cut issue in this court on each one of the foregoing propositions and the plaintiffs in error will now present their reply to the contentions of the County of Los Angeles as set out in its brief.

FIRST.

THIS COURT HAS JURISDICTION.

At the outset it is well to state fully what occurred in the court of first instance with regard to its holding concerning the amendment of 1913 to Section 1241. The defendant in error states on page 10 of its Brief:

> "Plaintiffs in error claim that the amendment of 1913 to Section 1241 is unconstitutional and void. The same claim was made in the trial court and that court agreed with them and pro-

ceeded as though the amendment had never been enacted."

It is submitted that the record does not justify the statement that the court "proceeded as though the amendment had never been enacted." A reference to the opinion of the judge of the court of first instance (Tr., Vol. III, Fols. 4032-4039) will show that so far from ignoring the statute and proceeding as if it had never existed, the judge specifically held that the matters which the statute declared in plain terms should be conclusive evidence were, in his view, to be given the force only of *prima facie* evidence.

The defendant in error then proceeds to quote at considerable length from the opinion of the District Court of Appeal, which quotation shows the view of the court to be that even though the lower court struck out as immaterial and irrelevant the pleadings which plaintiffs in error offered as a basis for their proof, nevertheless, because the court later heard evidence tending to substantiate the portions of the pleadings stricken out as immaterial, consequently the error, if any was committed, was thereby cured. In other words, the contention of the defendant in error is that the court may state in advance that evidence of a certain class is irrelevant, immaterial and surplusage and that if later the court receives such evidence the error of striking out the offer to produce such evidence is cured. It appears to us that the mere statement of this position is enough to demonstrate its illogical, inconsistent, unfair and arbitrary character. It is submitted that the lower court must take one ground or the other. It must hold the pleadings to be surplusage and the matter and offer immaterial

and irrelevant and consequently exclude any evidence thereunder or it must allow such pleadings to remain in the record and then receive evidence tending to prove the same.

If, however, evidence was received by the court without restriction, the only logical inference which can possibly be drawn is that it did not receive the slightest consideration when it was offered and admitted, because the court had previously stated in the plainest terms that it would regard such evidence as irrelevant and immaterial. It is obvious, consequently, that it could not give it any consideration when it was received, and it is to be presumed that it did not give it any consideration. If it had intended to give it any consideration it would have allowed the pleadings to remain in the record.

The defendant in error states again, on page 14 of its brief, that the statute in question was construed by the trial court as unconstitutional and void. It is submitted, as heretofore set out, that such was not the case. The Court gave the statute a strained construction in the apparent effort to sustain it as constitutional. The court then proceeded, under the statute, and received as evidence the resolution of the Board of Supervisors as to which the statute in question spoke, but instead of holding that the statute meant what it said and that those resolutions were conclusive evidence of the facts therein set out, the court held that they were *prima facie* evidence of the facts therein set out. In other words, the court left the statute as it found it and proceeded under it, save and except only that it changed the word "conclusive" to the words "*prima facie.*" If the court had found the statute in question to be void, unconstitu-

tional and of no effect, the natural and only course for the court to take would be to hold that no proceedings whatever that were begun under the statute could have any effect and the court would have consequently ignored its existence altogether. The opinion of the trial court heretofore referred to shows conclusively that such was not the course it took.

The defendant in error devotes the remainder of its discussion of this point, to attempting to show that the Federal question, if any, in the present case is overshadowed by certain alleged matters of local law and consequently this court cannot take jurisdiction. The plaintiffs in error do not dispute the general propositions laid down by the defendant in error with regard to this branch of the case, but we do respectfully and earnestly submit that those general principles have no application to the present case. The Federal question in this case was urged at the outset in the trial court and was relied upon in the Court of Appeal. There has never been a time since these condemnation proceedings started when the plaintiffs in error have neglected a single opportunity to urge the existence of the Federal question and to urge that they were being deprived of their rights without due process of law and in violation of the provisions of the Fourteenth Amendment to the Federal Constitution.

On page 16 of the brief of the defendant in error appears the statement that this court is without jurisdiction to review state judgments where, beside the Federal question decided by the state court there is another and distinct ground on which the judgment can be sustained. We submit that nowhere in its brief has the defendant in error pointed out that other and distinct ground on which the judgment can be sus-

tained. The cases cited by defendant in error in support of its propositions show clearly enough the limitation of the principles stated. A brief consideration of the cases cited on page 16 of the brief of defendant in error will be helpful.

In Kennebeck and P. R. Co. v. Portland & K. R. Co. (1871), 81 U. S., 14 Wall. 23, 20 L. Ed. 850, the Federal question was not raised by the pleadings nor in any of the proceedings, but only appeared in the opinion of the state court. The appellant claimed that a certain foreclosure which it was attacking was void, because that foreclosure was under an Act which violated the freedom of contract, but the Supreme Judicial Court of Maine held the foreclosure was good, without any reference to the Act which was being attacked, but under an earlier Act which was not the subject of attack.

Rector vs. Ashley (1867), 73 U. S., 6 Wall. 142, 18 L. Ed. 733, was decided in the lower court on the ground that limitations had run against the plaintiff and that consequently the Federal question was of no importance.

In Gibson v. Choteau (1868), 75 U. S., 8 Wall. 314, 19 L. Ed. 317, the attempt was made to bring in a Federal question for the first time on an argument filed in support of a motion for a rehearing in the Supreme Court of Missouri, and the Federal Supreme Court refused to hold that that argument was the point on which the state court decided the question.

Klinger vs. Missouri (1871), 80 U. S., 13 Wall. 257, 20 L. Ed. 635. By the Missouri constitution of 1865 a test oath was prescribed to be taken by public officers, jurors, etc., which oath the Federal Supreme Court declared to be unconstitutional. A juror in a

trial for murder in Missouri refused to take the oath, but upon being asked why he refused, he stated not only that he had sympathies with the South during the rebellion and therefore could not take the oath truthfully, but that those were his feelings still, and stronger than ever. He was then discharged from service and the defendant excepted. It was held that his avowed disloyalty to the government was a sufficient cause in itself for discharge, irrespective of his refusal to take the oath, and as it did not appear that he was discharged for his refusal to take the oath, the Federal Supreme Court refused to take jurisdiction in the case.

In Detroit City Railway Co. v. Guthard (1884), 114 U. S. 133, 29 L. Ed. 118, the Federal question relied upon in the Supreme Court of the United States, was not raised at all in the lower courts, though it might have been raised there at any time.

In Hale v. Lewis (1900), 181 U. S. 473, 45 L. Ed. 959, the Wisconsin statute required building and loan associations to deposit with the state treasurer security to a certain amount to be held in trust for the benefit of local creditors. The receiver of a Minnesota building and loan association, which corporation had made the deposit required by the Wisconsin statute by a resolution of its Board of Directors directing such deposit and compliance with the Wisconsin law, prayed that such securities might be turned over to him and the proceeds distributed among *all* shareholders, on the ground that such pledge was a preference of Wisconsin creditors and was in violation of the contract clause of the Federal Constitution. It was held that the contract clause could not be invoked to release these securities from the operation of the

statute, because the stockholders had waived their right to insist upon the constitutional objection by the voluntary act of the Board of Directors in making the deposit with the state treasurer.

In New York Central Railroad Co. v. New York (1901), 186 U. S. 269, 46 L. Ed. 1158, no Federal right was claimed to be violated in the original pleadings and no attempt was made to raise a Federal question until it reached the Court of Appeals, where it was, for the first time mentioned in a brief and not passed on by the Court. The case was decided in the Court of Appeals upon the ground that the charter of the city forbade the raising of the question of benefits to property in a court and the lower courts decided the case on the same ground.

Mobile, etc., Co. vs. Mississippi (1907), 210 U. S. 187, 52 L. Ed. 1016. The following quotation from the opinion will suffice:

> "In the assignment of error in this court the plaintiffs in error have for the first time invoked the Fourteenth Amendment to the Constitution of the United States."

Defendant in error also refers, on page 15 of his brief, to Brooks vs. Missouri (1887), 124 U. S. 394, 31 L. Ed. 454. It is only necessary to say that this court granted a motion to dismiss an appeal in that case because the defendant had not made his motion for a new trial in the lower court within the time allowed by the statute and consequently the Federal question was not an issue.

Garr, Scott & Co. vs. Shannon, 223 U. S. 468:

This was a case to recover a "franchise tax imposed by a State statute."

In addition to the Federal question involved, the decision of the State Court was based upon the *entirely independent* and conclusive local question "that the tax was voluntarily paid."

That case and this are in no sense analogous. Here the Appellate decision was based solely upon the Federal questions involved. All else that was said—*nothing else was decided*—related solely to the effect of the decision of the Federal questions. It did not concern and did not decide any other independent question which, aside from the Federal questions, would, in and of itself, have been conclusive of the controversy, or, for that matter, any other question whatever, its decision of the Federal questions being completely conclusive of the controversy.

This, with one exception, disposes seriatim of all of the cases cited and relied upon by defendant in error in this behalf.

That single exception is the case of Baltimore Traction Company vs. B. Belt R. Co., 151 U. S. 137, cited to the effect "that where a statute providing for condemnation proceedings has been construed by the state courts *as requiring notice* no federal question with respect to due process of law can be based upon the objection that such statute allows condemnation without notice." (Brief of Defendant in Error, p. 14.)

The syllabus of that case upon which the above quoted statement is founded is as follows:

> "When it was objected that a statute of Maryland as to condemnation of lands, violated the U. S. Constitution in that an owner of land could be deprived thereunder of his property without due process of law because the statute did not provide for any notice to him, *and the court of appeals of that state had decided that the statute, properly construed,* required notice, held, that this court is bound by the state decision, and the want of requirement of notice did not exist, and no Federal question is involved."

It is submitted that the foregoing analysis shows clearly the distinction between the case at bar and those cited by the defendant in error in support of its proposition. Upon their behalf, although the plaintiffs in error have no doubt of the jurisdiction of this court, we wish to direct the court's attention to the case of Backus vs. Fort Street Union Depot Company (1898), 169 U. S. 567, 42 L. Ed. 853, where the following language is used in regard to the question of jurisdiction:

> "Inasmuch as the respondents, both in the trial of the Circuit Court and in the subsequent proceedings on the certiorari in the Supreme Court, specifically set up and claim rights under the Federal Constitution which were denied, the jurisdiction of this court is not open to doubt. They again and again insisted that certain provisions of the Federal Constitution, which they named, stood in the way of any further proceedings against them."

The foregoing quotation is from one of the cases principally relied upon and most often cited by the defendant in error and appears to be conclusive on the question of jurisdiction.

The defendant in error refers to Murdock vs. City of Memphis (1874), 87 U. S. 590, 20 Wall. 591, 22 L. Ed. 429. The plaintiffs in error also refer to this case for a careful discussion of the question of jurisdiction and we claim that under the test there applied no doubt remains as to the court's jurisdiction in the present case. Among other things the court says in its opinion in the Murdock case:

> "Or it may be that there are other issues in the case, but they are not of such controlling influence on the whole case that they are alone sufficient to support the judgment.
>
> It may also be found that, notwithstanding there are many other questions in the record of the case, the issue raised by the Federal question is such that its decision must dispose of the whole case.
>
> In the two latter instances there can be no doubt that the judgment of the state court must be reversed and under the new Act (Act of 1867) this Court can either render the final judgment or decree here, or remand the case to the state court for that purpose."

In Myles Salt Company vs. Iberia Drainage District, 239 U. S. 478, 60 L. Ed. 392, the appellee claimed that the judgment of the Supreme Court of Louisiana rested entirely upon an independent question of pleadings under the laws of Louisiana and decided no Federal question. This was a case where under certain state statutes there was a formation by a police jury of a drainage district which included the land of the plaintiffs, whereas the land of the plaintiffs was not where it could by any possibility be benefited by the improvements in jetties which the legislation author-

ized. It was held by the court that there was a Federal question, in that the administration and interpretation of a state act was attacked, though the act itself was not attacked, and further, that the formation of the district for drainage, under the circumstances above stated, was wholly an arbitrary act and not within the powers of the state, because of the Fourteenth Amendment.

We wish once more to emphasize that the record in this case shows a reliance by the plaintiffs in error upon the Federal Constitution, particularly the Fourteenth Amendment thereto, from the very inception of these proceedings and that those provisions have been urged by the plaintiffs in error at every stage of the proceedings, that their rights have been saved by proper exceptions when their contentions were overruled and that in spite of undue consideration given by the lower courts to other aspects of the case, the Federal questions raised by the plaintiffs in error, at the outset, have been and are the controlling and only real questions in the entire record.

SECOND.

CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 1241, AS AMENDED IN 1913, IS REPUGNANT TO THE DUE PROCESS OF LAW CLAUSE OF THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION.

That portion of the statute which is attacked is as follows:

> "Before property can be taken, it must appear:

1. That the use to which it is to be applied is a use authorized by law;

2. That the taking is necessary to such use; provided, when the legislative body of a county, city and county, or an incorporated city or town, shall, by resolution or ordinance, adopted by vote of two-thirds of all its members, have found and determined that the public interest and necessity require the acquisition, construction or completion, by such county, city and county, or incorporated city or town, of any proposed public utility, or any public improvement, and that the property described in such resolution or ordinance is necessary therefor, such resolution or ordinance shall be conclusive evidence; (a) of the public necessity of such proposed public utility or public improvement; (b) that such property is necessary therefor; (c) that such proposed public utility or public improvement is planned or located in the manner which will be most compatible with the greatest public good and the least private injury; provided that said resolution or ordinance shall not be such conclusive evidence in the case of the taking by any county, city and county, or incorporated city or town, of property located outside the territorial limit thereof." (California Statutes, 1913, page 549.)

As pointed out in the opening brief of the plaintiffs-in-error, it was contended at the trial that if the road laws of California contemplated the institution of condemnation proceedings by such an ex parte resolution of the Board of Supervisors as that which formed the sole basis of these condemnation proceedings and further contended that if the foregoing proviso applied to such a resolution, then the proviso would be unconstitutional as attempting to authorize the taking of property without due process of law, no hearing of

any kind being provided for or accorded to the property owners.

Thus all the vital questions essential to the taking of private property for public use, except only the one question of the amount of damages, could be conclusively determined, and might be arbitrarily determined, by a two-thirds vote of the supervisors, without any notice at all to the land owner and with no opportunity whatever on his part to be heard. The trial court held that the proviso would be unconstitutional if it were given the construction which its language indicates, but then the trial court went out of its way to hold that the resolutions would, without any other proof whatever, establish *prima facie* the facts required to be found by Section 1241. (Tr., Vol. III, Fols. 4032-4039.) But when the case reached the District Court of Appeals, Second Appellate District, that court decided that the statute meant what it said, and when it said "conclusive evidence," it meant conclusive evidence, and not *prima facie* evidence (Tr., Vol. III, Fols. 4287-4289), and the Court of Appeals specifically refused to review the evidence introduced in pursuance of the ruling of the trial court on the question of necessity. (Tr., Vol. III, Fols. 4266-4282.)

There is no question, and it is not denied by the defendant in error, that prior to the amendment of Section 1241, C. C. P., Subdivision 2, by statutes of 1913, page 549, the necessity or expediency of taking private property for a public use was in California subject to judicial inquiry. (See the cases cited page 38 opening brief of plaintiffs in error.)

As we have pointed out heretofore and as defendant in error has not disputed, the express terms of Sec. 1241 state that before property can be taken "it must appear."

The defendant in error has cited a large number of cases supporting, as it claims, the constitutionality of statutes by which the legislature itself, or a subordinate tribunal, conclusively determines the matters enumerated in Sec. 1241 of the California Code of Civil Procedure. While there is authority for the view that the questions of necessity and expediency are exclusively for the legislature, the rulings on this subject are by no means universal and as heretofore pointed out, in California, before the amendment of 1913, and since then to the present case, the law was settled that the question of necessity and expediency was for the court, not for the legislature. Section 1241 itself indicates very clearly that the legislature contemplated that the court should pass upon these matters before the amendment of 1913 went into effect.

It has been pointed out by the plaintiffs in error in their opening brief, and has not been denied by the defendant in error, that in the opinion filed by a judge of the Circuit Court of Appeals, namely in Ennis-Brown vs. Central Pacific Railway Co., *et al.*, 235 Federal 825, the view is taken that the court must determine in condemnation cases whether the use to which it is sought to subject the property is one authorized by law and whether the taking is necessary to such use.

In Ryerson vs. Brown (1877), 35 Mich. 333, 24 Am. Rep. 564, there was before the court a Michigan statute (Laws of 1873, Vol. I, pages 486, 495), which provided for proceedings to obtain a right to flow the land of others for water power mill purposes. That statute was held by Mr. Chief Justice Cooley to be unconstitutional and void, for the reason that there is no such requirement of either general or local public interest

or public policy to be subserved, and no such *public necessity* for the taking of private property as ought to exist to justify the exercise of right of eminent domain. It will thus be seen that when faced with the practical question in a case coming before him for decision this eminent jurist and text writer did not hesitate to decide in his judicial capacity a question of necessity in an eminent domain proceeding.

In Widow Lecoul vs. the Police Jury (1868), 20 La. Ann. 308, the widow applied for an injunction to prevent the county from putting a road across her land. She claimed there was another road in existence connecting the same two points sought to be connected by the road across her property, but that the county had neglected it and had let it get out of repair. Her application for an injunction was denied in the lower court. That decision was, however, reversed in the Supreme Court, the court saying:

> "The projected road would sever the plaintiff's plantation, which would necessarily prove very injurious to her, but this consideration would not have the weight of a feather in the scale if the road through her land was really necessary for public purposes. This we do not consider it to be, whilst there is a state road that could be made passable at all times at less cost than would be incurred in providing the new road."

The similarity of the statement in the case just quoted with the situation disclosed by the record to exist in the case now before the court, is very striking indeed. A careful study of the record brought up by these appeals shows all the circumstances mentioned in the above quotation to exist in the present case. It

appears to be a precedent completely on all fours with the present case, except that it is not complicated by the construction of a lower court that a statute meant something other than what its plain terms state.

If, however, for the sake of argument, it be admitted that the question of necessity is one for the legislature, the position of the defendant in error is in no wise improved. It has cited on pages 28-30 of its brief thirty cases as supporting the constitutionality of statutes by which the legislature itself, or a subordinate tribunal, conclusively determines the matters enumerated in Section 1241 of the California Code of Civil Procedure. It states that those cases are all directly in point. It must be kept in mind that the language of the statute now before the court is that certain resolutions passed by certain bodies in a certain way, shall be "conclusive evidence" of certain things therein contained. It is that statute, so framed and in the language above set out, which must be sustained. The language of that statute indicates very clearly, as we have hertofore demonstrated, that the statute itself contemplates, or did contemplate before 1913, a judicial determination of the questions there raised. Even including the amendment of 1913 the language shows that the legislature contemplated a court proceeding. It is respectfully and earnestly contended that the Legislature has in terms told the court in advance how it must decide a certain class of cases, and it would be hard to imagine any clearer interference by one branch of the Government with the duties of another than such a course as this. All the statutes which were considered by the various courts in the thirty cases referred to by the defendant in error are entirely different from the one now before the court.

In the vast majority of those cases, as careful examination of them will show, the general scheme of the statute was this: That the legislature, or some subordinate local body, or some public service corporation, or some commission, might take certain property for a certain specified public use; that if it were possible to do so, the legislature, the subordinate local body, or the commission, or the officials of the public service corporation should agree with the owner of the property taken as to the price to be paid therefor; that if it was impossible to come to such an agreement then the owner, or the commission, or the officials of the public service corporation might apply to a court which would either itself fix upon the amount of the compensation to be paid, or would appoint a jury, or commissioners, or other officials to determine the amount of compensation to be paid for the property so to be taken.

In no single one of the cases cited by the defendant in error did the statute provide that the court should be conclusively bound by any resolution or act. In other words, adopting the view of the defendant in error, the legislature, in the cases referred to, assumed that the question of necessity was a legislative and not a judicial question and that consequently the court had nothing whatever to do with that branch of the case; but the Legislature of California, in Section 1241, has made or attempted to make, the court subservient to the will of the legislature and to make the judicial function a mere mockery. It has seriously told the court that it shall try a certain question,—not that it has nothing to do with a certain question, and that that certain question is outside of its jurisdiction entirely,—but that it shall take up and consider a cer-

tain question and that it shall decide that question in one way only, namely, the way in which the legislature directs it to decide in the statute. It might be seriously argued that the statute in question was constitutional if it in express terms declared that the legislature or the subordinate body having determined what lands should be taken, the court should decide simply the amount of compensation and whether its use was public. It is not reasonable, it is not consonant with American ideas of constitutional government, and it is not due process of law, or any process of law at all, for the legislature to put into the hands of the court any particular question and then to tell the court in advance how it shall decide the same.

The courts in many jurisdictions have considered in many bearings how far the legislature may go in making any fact or set of facts conclusive evidence of any other fact. We have already referred, in our opening brief, to the article at 10 Ruling Case Law 864 and to the case there cited, namely, Board of Commissioners of Excise v. Merchant, 106 N. Y. 143, 8 N. E. 484. In that case the court had before it Section 12 of the Excise Act of New York (Chapter 628, laws of New York, 1857). In the course of its opinion the court made this important observation:

> "The general power of the legislature to prescribe rules of evidence and methods of proof is undoubted. While the power has its constitutional limitations it is not easy to define precisely what they are. A law which would practically shut out the evidence of a party, and thus deny him the opportunity for a trial, would substantially deprive him of due process of law."

In Howard v. Moot, 64 N. Y. 262, New York Court of Appeals states:

> "It may be conceded for all the purposes of this power that the law which should make evidence conclusive which was not so necessarily in and of itself and thus preclude the adverse party from showing the truth, would be void as indirectly working a confiscation of property or a destruction of vested rights."

We quoted in our opening brief from Missouri, etc., Railway Company v. Simonson, 64 Kansas 802, 91 A. S. R. 248, and wish now to quote still further from that opinion as follows:

> "The theory on which all these cases proceed is that an act of the legislature which undertakes to make a particular fact or matter in evidence involving the substantive right of the case, conclusive upon the parties and which precludes inquiry into the meritorious issues of a controversy is an invasion of the judicial process and a denial of due process of law. The legislature may regulate the form and the manner of use of the instruments of evidence—media of proof—but it cannot preclude a party wholly from making his proof. A statute which declares what shall be taken as conclusive evidence of a fact is one which, of course, precludes investigation into the fact and itself determines the matter in advance of all judicial inquiry.
>
> If such statutes can be upheld, there is then little use for courts, and small room indeed for the exercise of their functions."

In a note to People v. Cannon (139 N. Y. 32, 1893), 36 A. S. R. 668, the writer states at page 686:

"Statutes have also frequently been enacted purporting to make one fact conclusive evidence of another, when as a matter of fact the existence of the former is not necessarily connected with the existence of the latter. The effect of such a statute, if constitutional, is to create a liability or cause of action, or of defense where the presumed fact but for the existence of the statutes might be disproved. If, therefore, the fact is one which, in the nature of things, is an essential part of the cause of action or of the right claimed the statute must be unconstitutional, otherwise the power of the legislature to dispense with an essential fact and to create a cause of action where none otherwise exists, must be void, and to affirm this would be to place the rights of all persons within the absolute control of the legislature."

It is contended that the effect of Section 1241 is exactly what is set out in the above quotation, namely, while proceeding under the guise of a judicial inquiry, it places the rights of all persons within the absolute control of the legislature, conditioned only upon the action of two-thirds of the members of the local body in an entirely ex parte proceeding. It is submitted that the mere statement of this situation will indicate a lack of due process of law.

Vega Steamship Co. v. Consolidated Elevator Company, 75 Min. 308, 74 A. S. R. 484. The Minnesota Statute (Section 7675 of the general statutes of 1894), provided that the State Weighmaster's certificate as to weight of grain "shall be conclusive upon all parties, either in interest or otherwise, as to matters contained in said certificate." This statute was held void by the Supreme Court of Minnesota, and the following appears in the opinion at 74 A. S. R. 487:

> "Under the statute, the party running the elevator has no option as to whether or not the State Weighmaster shall weigh the grain; and, in our opinion, the State cannot force an umpire upon such party against his will and then close his mouth so that he cannot show the umpire has made a substantial mistake whether that mistake is the result of fraud, or bad faith or merely of negligence."

In the instant case, the property owner has no right to be heard before the board. The board is made an umpire, but the property owner's mouth is closed when he and the board are before the Court and he is not allowed to state or to prove anything whatever in regard to the action of the board, as evidenced by the resolutions by it passed. It seems that any further comment on this situation is almost superfluous, but there are many other instances, as will appear hereafter, where the courts have made the same or similar statements.

In People vs. Rose, 207 Ill. 352, 69 N. E. 762, the court had before it a statute of Illinois which made certain facts *prima facie* evidence of the loss of corporate powers by Illinois corporations. In holding that such a statute was constitutional the court observed:

> "It is not, however, within the legislative power to declare what shall be conclusive evidence, as that would be an invasion of the power of the judiciary."

Citing Corbin v. Hill, 21 Ia. 70; White v. Flynn, 23 Ind. 46; U. S. v. Klein, 13 Wall. 128; Missouri, etc., Railway Co. v. Simonson, 64 Kans. 802, 91 A. S. R. 248.

In Otis Elevator Company v. The Industrial Commission, 302 Ill. 90, 134 N. E. 19, the court had before it the Workmen's Compensation Law of Illinois as amended by laws of Illinois, 1921, page 446, which provided that in a review by the Circuit Court of the findings of the Industrial Commission, findings of fact made by the Commission shall not be set aside unless contrary to the manifest weight of the evidence. That section was held void as usurping judicial power in attempting to prescribe the rule governing judicial action and determination. The court in that case remarked:

> "Due process of law requires submission to a judicial tribunal for determination upon its own independent judgment as to both law and facts";

citing Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287, 64 L. Ed. 908.

It will be observed that the California Statute which is the subject of this discussion submits certain questions to a judicial tribunal for determination and then in the same clause proceeds to tell the judicial tribunal how it shall decide both the law and the facts.

The case of Ohio Valley Water Co. v. Ben Avon Borough, referred to, was in error from this court to the Supreme Court of the State of Pennsylvania to review a judgment which, in reversing the decree of the superior court, reinstated a rate-making order of the State Public Service Commission. The Company maintained that the rates which were fixed by the rate-making commission were confiscatory and deprived it of its property without due process of law. The superior court unheld the contention of the company and directed that different rates be prescribed. The

Supreme Court of Pennsylvania, however, reversed that judgment and directed that the original rates fixed by the commission should stand. This court at page 289 states:

> "In all such cases, if the owner claims confiscation of his property will result, the state must provide a fair opportunity for submitting that issue for determination upon its own independent judgment as to both law and facts, otherwise the order is void because in conflict with the due process of law clause, 14th amendment. Missouri Pacific Railway Co. v. Tucker 230 U. S. 340, 347, 57 L. Ed 1507; 1509; Wadley v. Southern Railway Co. of Georgia, 235 U. S. 651, 660, 661, 59 NE 405, 411; Missouri v. Chicago B. & Q. R. Co. 241 U. S. 533, 538, 60 L. Ed. 1148, 1154; Oklahoma Operating Co. v. Love 252 U. S. 331, 64 L. Ed. 596."

U. S. v. Klein, 13 Wall. 80 U. S. 128, 20 L. Ed. 519. A rider on the legislative, executive and judicial appropriation Act for the year ending June 30, 1871 (16 Stats. 235) provided that when any person has accepted a pardon under the terms of certain amnesty proclamations, such acceptance should be taken and deemed in certain suits in the Court of Claims for the recovery of property or its value "conclusive evidence that such person did take part in and give aid and comfort to the late rebellion," and that on proof of such pardon the jurisdiction of the Court of Claims should cease. In disposing of the constitutionality of that statute this court stated, 20 L. Ed. 526:

> "The legislature cannot change the effect of such a pardon any more than the executive can change a law. Yet this is attempted by the provision under consideration. The court is required to receive special pardons as evidence of guilt and

> to treat them as null and void. It is required to disregard pardons granted by proclamation on condition, though the condition has been fulfilled, and to deny their legal effect. This certainly impairs the executive authority and directs the court to be instrumental to that end."

The statute now before the court certainly impairs the judicial authority and directs the court itself to be instrumental to that end.

State v. Schlenker, 112 Ind. 642, 84 A. S. R. 360 holds that a legislature may define what is adulteration of milk, and observes:

> "No doubt the legislature cannot indirectly dispose of a cause by prescribing conclusive rules of evidence and it has no power to direct the judiciary in the interpretation of existing statutes; Groesbeck v. Seeley, 13 Mich. 329; Johns v. State, 55 Md. 362; Reiser v. William Tell, etc., Association, 39 Pa. St. 137; Salters v. Tobias, 3 Paige 338."

Meyer v. Berlandi, 39 Min. 438, 12 A. S. R. 663, the Supreme Court of Minnesota considered the Minnesota Mechanics Lien Law (Laws of 1887 C. 170 Sec. 5); that statute provided that the fact that the person performing labor or furnishing material in the building of a house was not enjoined by law from performing labor or furnishing material, by the person in whom the title was vested at the time, shall, be conclusive evidence that such labor was performed, or material furnished, with and by the owner's consent. The Minnesota court states in 12 A. S. R. 667:

> "A man cannot thus be deprived of his property without his consent. The legislature may doubtless

> establish rules of evidence, but to enact a law making evidence conclusive, which is not so necessarily in and of itself and thus preclude a party from showing the truth, would be nothing short of confiscation of property and a destruction of vested rights without due process of law."

In a California case, which was an appeal from Los Angeles County, Ramish v. Hartwell, 126 Calif. 443, (1899) 58 Pac. 920, the California Supreme Court considered the act of February 27, 1893 (California Statutes 1893, page 33, sec. 4) which provided that a city assessment should be a first lien upon the property affected thereby and that the bonds issued therefor should be conclusive evidence of the validity of the said lien. This section was held to be unconstitutional, the court saying at 58 Pac. 922:

> "It may be regarded as settled that the legislature may make a tax deed conclusive evidence of compliance with all provisions of the statutes which are merely directory of the mode in which the power of taxation may be exercised, but that it cannot make it conclusive evidence of those matters which are essential to the exercise of the power; that as to those steps which are judicial in their nature and without which the powers of taxation cannot be called into exercise such as the listing or assessment of the property, a levy of the tax, some notice of its delinquency and that the property will be sold therefor—the legislature cannot deprive the owner of the right to show want of compliance."

citing Cooley, Constitutional Limitations, page 452.

In Peterslie v. McLachlin, 80 Kans., 176, 101 Pac. 1014 (1909) The Kansas Court considered Section 3

C. 373, page 540 of the laws of 1907. That section made the posting in the office of the county clerk of a copy of a notice of forfeiture of school lands conclusive evidence of proper service of such notice. The court states 101 Pac. 1015:

> "This is a legislative declaration of the truth of facts and an invasion of the province of the judicial department of the Government to which alone belongs the power to inquire whether facts upon which rights exist are true or false. It must be held unconstitutional because it denies to the holder of the original certificate due process of law, and because wrongfully depriving the courts of the judicial power to determine the weight and sufficiency of evidence * * *; where the legislature attempts to make these evidential things conclusive, it passes the bounds of legislative power and invades the province of the court, and in the language of the court in Railway Co. v. Simonson, *supra*, precludes investigation into the fact and itself determines the matter in advance of all judicial inquiry."

This discussion might be continued almost indefinitely, but the cases heretofore referred to indicate with sufficient clearness the view of practically all courts on the matter of the legislature attempting to make certain facts conclusive evidence and thus precluding the court from exercising its usual and constitutional functions. Reference is, however, made to the following cases which are in the same line and to the same effect as those above stated:

Wilson v. Wood, 10 Okla. 279, 61 Pac. 1045;
White v. Flynn, 23 Ind. 46;
Wantland v. White, 19 Ind. 471;

Corbin v. Hill, 21 Ia. 70;
Martin v. Cole, 38 Ia. 141;
Johns v. The State, 55 Md. 350;
Quinlon v. Rogers, 12 Mich. R. 168;
Matter of Stickney, 110 App. Div. (N. Y.) 294;

It will be observed that even in those newer commonwealths where the power of the legislature is for many reasons looked upon with more favor and given greater scope than in the older states of the East and South, the tendency and the universal view seem to be that the legislature may not interfere with the judicial functions of the court by assigning to it a question for determination, and at the same time telling it in advance how that question shall be decided.

As indicating the intention of the Legislature of California that the court should have the right and the duty to inquire into all questions provided for in the original Section 1241, reference is made to the text of Section 1245, California Code of Civil Procedure, being in the same chapter with Section 1241 (Deering 1915 page 577, Kerr page 2745):

> "The clerk must issue a summons which must contain the names of the parties, a general description of the whole property, a statement of the public use for which it is sought and a reference to the complaint and descriptions of the respective parcels and a notice to the defendant to appear and show cause why the property described should not be condemned as prayed for in the complaint. In all other particulars it must be in the form of a summons in civil actions, and must be served in like manner."

Considerable emphasis is placed by the defendant in error upon the fact that the amendment of November

5, 1918, to the California Constitution was adopted after these proceedings had been begun and while they were still pending. The attention of the court is, however, called particularly to that amendment, which is set out in full at pages 56 to 57 of the opening brief of plaintiffs in error, as indicating beyond any shadow of doubt that the sovereign people of the State of California, not its agents the legislature, but the people themselves, intended and contemplated that the question of necessity in condemnation proceedings should be in the hands of their agents the courts and not in the hands of their agents the legislature. Observations of counsel for defendant in error as to what that amendment may mean but does not say appear to be based on a somewhat weak foundation.

In so elementary a portion of the law as a constitutional amendment it must be assumed that if the people meant their language to have the limitations which counsel for defendant in error place upon it, the people themselves would have made it perfectly plain that when they said "including damages sustained by reason of an adjudication that there is no necessity for taking the property, as soon as the same can be ascertained according to law," they, the people, would have expressly limited the application of the provision just quoted to the state of facts to which counsel endeavors to limit it in the brief for defendant in error.

At pages 39-41 of the brief for defendant in error, counsel quote at considerable length from the case of Backus v. Ft. Street Union Depot Co., (1893) 169 U. S. 557, 42 L. Ed. 853, with the apparent intention of proving thereby that the legislature of California had the right to treat property owners, who happen to fall into several different classes, in several different

and wholly arbitrary ways in regard to the conduct of condemnation proceedings regarding their property. It need only be pointed out, we submit, that in the Backus case the party who considered himself aggrieved relied upon the fact that his hearing was being conducted before a common law judge and jury, instead of before simply a jury of inquest. In other words, he was in that case objecting because he was receiving greater safeguards than he had received under the old laws. In this case the plaintiffs in error are contending and have contended throughout that the safeguards allowed them under the old laws of California were deliberately and arbitrarily withdrawn from them, and that they are receiving not only less consideration, but no due process of law under the present system to which they are being unwillingly subjected. It is to be noted that counsel at page 37 of the brief for defendant in error have been forced into the position, by the previous holdings of the California courts, of saying that even though the California courts may have uniformly held in the past that necessity was a question for the court it can make no difference in this case and to the plaintiffs in error, because, forsooth, the District Court of Appeal in California decided that in this particular case it was a question for the legislature and not for the courts. As has been indicated heretofore and as will be pointed out in greater detail in a subsequent section of this brief, this is only one instance in which it appears that this case was treated and considered by the California courts in a manner entirely different from its previously established practice in other cases.

The phrase "due process of law," as used in the Federal Constitution, is the equivalent of the "law of the land."

Murray's Lessee v. Hoboken, 18 How. 272, 278;
Davidson v. New Orleans, 96 U. S. 97, 101;
Missouri Pacific Ry. Co. v. Humes, 115 U. S. 512, 519;
Scott v. City of Toledo, 36 Fed. Rep. 385, 39[illegible];
Cooley's Constitutional Limitations, 432.

The words "due process of law" have the same meaning in the Fifth as in the Fourteenth Amendment to the Federal Constitution.

Hurtado v. California, 110 U. S. 516.

"Due process of law, within the meaning of the amendment" (the Fourteenth Amendment being here considered) "is secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government."

Giozza v. Tiernan, 148 U. S. 657;
Hurtado v. California, 110 U. S. 516, 535;
Caldwell v. Texas, 137 U. S. 692, 697;
Leeper v. Texas, 139 U. S. 462.

"Purely arbitrary decrees or enactments of the Legislature directed against individuals or classes are held not to be "the law of the land" or to conform to "due process of law."

McGehee on Due Process of Law, p. 60.

A classification "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis."

Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 560;

Gulf, etc., Ry. Co. v. Ellis, 165 U. S. 150, 165; Cotting v. Goddard, 183 U. S. 79.

We will close this branch of the discussion by the following quotation from the Supreme Court of Oklahoma in Board of Education of City of Stillwater v. Aldridge, 13 Okla. 205, 73 Pac. 1104:

> "When the legislature prescribes the mode by which property may be taken for public use, notice of the proceedings for condemnation must be provided for, to be given to the party whose property is taken or injuriously affected, in order that he may have an opportunity to be present and protect his rights at some stage of the proceedings, and in order to ascertain the proper measure of compensation to which he is entitled. If such notice is not provided for, the law is void."

THIRD.

PLAINTIFFS IN ERROR WERE DENIED THE EQUAL PROTECTION OF THE LAW.

As was pointed out at pages 92 and 93 of the opening brief of plaintiffs in error, in California the question of what lands are necessary to be taken in the exercise of the right of eminent domain is expressly made a judicial question, not only by the Code sections cited, but also by the amendment of November 5, 1918, to Article 1, Section 14 of the California Constitution, which amendment has been referred to in this brief and which is set out in full in the opening brief for plaintiffs in error at pages 56-57. As pointed out by us at page 93 of our opening brief, the legislature, when it attempted to make the ex parte resolutions of a political sub-division conclusive evidence as to these essential facts, without any hearing whatever being provided for, had the effect of depriving

plaintiffs in error of their property without due process of law and denying to them the equal protection of the law, since by well settled practice all judicial questions must be determined by the courts upon competent evidence and without a previous direction of the legislature as to what particular form of evidence should not be in any wise disputed.

It is interesting to note that the lower court held that the resolutions referred to were only *prima facie* evidence, it not being possible, apparently, for the judge of that court to go the length which the legislature had gone and to deny to the plaintiffs in error any hearing whatever upon these questions. The action of the lower court in so holding does not strengthen in the slightest, we submit, the position of the defendant in error, for what the lower court did was a matter of grace and not a matter of right. Consequently the ultimate decision rested upon the effect given to the resolutions, heretofore referred to, by the District Court of Appeals. The Court of Appeals, unlike the judge in the trial court, was prepared to go the full length which the legislature had gone and to hold that the statute meant exactly what it said and consequently, in spite of the apparent desire of that court to escape a direct decision upon the constitutional question involved, the question is nevertheless raised and is before this court, and the decision of the Court of Appeals had the undoubted effect of denying to the plaintiffs in error the equal protection of the law.

As has heretofore often been held and as is substantiated by the authorities cited by us at pages 94-95 of our opening brief, it is not enough that the owners may by chance or by favor have a hearing, the law must require notice to them and give the right to a hearing. And as to the question of constitutionality,

it makes no difference that a hearing of some sort was granted by the lower court as a matter of grace upon the question of necessity, when as a matter of fact the law provided for no such hearing. In other words, it is the law itself which is the subject of investigation, not the interpretation, however unreasonable, which may have been placed upon the law by a court which did not feel justified in giving the law its actual and apparent force and effect. Reference is again made to Stuart v. Palmer, 74 N. Y. 183; Spencer v. Merchant, 125 U. S. 345, 31 L. Ed. 763, 768.

The State of California itself had repeatedly decided, as pointed out by us in the authorities cited at pages 95-97 of our opening brief, that the invidious distinctions and the character of the proviso of Section 1241 were unconstitutional. The reference of counsel for defendant to this fact appears to be an attempted plea in confession and avoidance. He admits that such was the law in California but states that the Court of Appeals decided otherwise in this case. This is merely another instance of the peculiar necessity which the Court of Appeals appeared to feel to overrule this and other practices in California theretofore long established, in order to place the decision of this case upon grounds other than a consideration of the Federal questions involved.

In view of the fact that the distinctions between the various classes of property owners considered in Section 1241 appear to counsel for defendant in error to be so utterly harmless, it is well to restate here what we stated in the opening brief.

The Section singles out the landowner who owns land in a certain locality when the resolutions of a certain political sub-division of the state is adopted by a two-thirds vote of its governing body and denies

to such land-owner any hearing whatever upon the vital facts catalogued in the said section, whereas to all other persons whose land may be condemned for public purposes there is accorded a hearing by the court without any presumptions whatever against them. "They do not stand equal before the law. They do not receive its equal protection. All this is obvious from a mere inspection of the statute." Gulf, etc. Ry. Co. v. Ellis, 165, U. S. 170, 41 L. Ed. 666.

It is to be noted that counsel for defendant in error do not, apparently dispute the application of the authorities which we cited in our opening brief on this particular question, but they simply collect other authorities, which, we submit, will be found, upon inspection, to be of no application to the case at present before the court.

Our contention in this behalf is strongly exemplified and supported by some of the authorities cited and quoted in the brief of defendant in error. This we will illustrate by a few excerpts:

> *"The protection which the organic law affords a citizen against arbitrary discrimination in favor of other citizens, or a particular class of citizens arbitrarily selected, is the same thing in the Constitution which forbids the sovereign power to take the property of the citizen for private purposes at all, and which affords the guaranty of the equal protection of the laws."*
>
> Southern Railway Co. v. Memphis, 126 Tenn. 267. (Brief of Defendant in Error.)

This is precisely what we contend, and is the precise principle which the obnoxious proviso violates.

In Cincinnati Street R. Co. vs. Snell, 193 U. S. 30 (cited by defendant in error at pages 52 and 53 of its

brief), the objection was that "the state has allowed one person to seek one forum and has not allowed another person, asserted to be in the same class, to seek the same forum, *although as to both persons the law has afforded a forum in which the same and equal laws are applicable and administered.*"

Here certain classes are accorded a hearing before a competent *judicial* forum, while the class to which the *proviso* in question relegates the Plaintiffs in Error is denied any hearing of any kind or before *any forum whatever.* In the one instance the property *if taken* (which the Court must determine) is taken *judicially,* in the other, without any determination of any judicial body whatever or any hearing of any kind or character, it is taken *arbitrarily.*

In the same case it was emphasized that the situation presented "*a condition where fundamental rights are equally protected and preserved,*" although "protected and preserved" in different forums.

Here in certain classes fundamental rights of the property owners are protected and preserved by the safe bulwark of a judicial hearing; in another class—unfortunately ours—there is no protection or preservation of any rights by any kind or character of hearing whatever.

Then, again, in that case it was said: "It is impossible to say that the rights which are thus protected and preserved have been denied because the state has deemed best *to provide for a trial in one forum or another.*"

Here it is palpably obvious that our rights were not thus or at all protected or preserved because as to us the State provided for no trial of any kind in any forum.

Finally, this Court quoting from one of its earlier decisions, the quotation by Defendant in Error, from the opinion in question concludes: "But it is clear that the 14th Amendment in no way undertakes to control the power of a state *to determine by what process legal rights may be asserted or legal obligations be enforced,* provided the method of procedure adopted for these purposes *gives reasonable notice and affords fair opportunity to be heard before the issues are decided.* This being the case, it was obviously not a right, privilege or immunity of a citizen of the United States to have a controversy in the state court prosecuted or determined by one form of action instead of by another."

We think it equally clear that the 14th Amendment to the Constitution of the United States does undertake to control the power of a state when such state fails as to one class to provide any process by which "legal rights may be asserted or legal obligations be enforced," and fails to adopt any method of procedure which "gives reasonable notice and affords fair opportunity to be heard before the issues are decided," while as to other classes, not differently situated in any real or fundamental sense, it does afford all of these constitutional rights and legal protections.

In Pittsburgh, etc. R. Co. v. Backus, 154 U. S. 421 (cited and quoted at pages 53, 54 and 55 of brief of Defendant in Error), this Court said: "*If a single hearing is not due process,* doubling it will not make it so, and the power of a state *to make classifications in judicial or administrative proceedings* carries with it the right to make such a classification as will give to parties belonging to one class *two hearings* before their rights are finally determined, and to parties belonging to a different class only *a single hearing.*"

With this we have, and we could not legitimately have, any quarrel. One full, fair hearing is all that anyone can legitimately demand. But the Plaintiffs in Error here, accidentally falling into the two-thirds vote class of the pernicious *proviso* in question, were not even accorded—and according to the California District Court of Appeals were not even entitled to—"a single hearing."

True the *lower Court*, with an eminent sense of justice (limited herein by its views as to the *prima facie* effect of the resolution of intention) did attempt to accord the plaintiffs in error a sort of burden-bearing hearing, but even this was, in actual legal effect, disregarded by the Appellate Court and swept aside by that Court as "immaterial."

So in Kentucky R. R. Tax Cases, 115 U. S. 321 (cited and quoted from at pages 55 to 59 of brief of Defendant in Error) it is said: *"The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances."*

Here (and this we submit with the utmost confidence of its unquestionable soundness) all *owners of property* which is sought to be condemned for a given public use stand in exactly the same "similar circumstances" before the law; the vote of one supervisor or other member of a municipal body upon the necessity of taking private property for a public use does not and cannot alter or change the legal status of any such property owner. Therefore, as all such property

owners are naturally and irrefutably in the same class as to their property rights and their rights to protect their property rights, the *proviso* which we are considering most emphatically does not "operate equally and uniformly upon all persons in similar circumstances."

And in an early and well considered case the Supreme Court of California held a statute to be unconstitutional which imposed different precedent conditions upon the cities of the fifth and sixth classes, before the right to condemn property for certain purposes could be exercised, on this point saying:

> "It seems to us perfectly clear that the clause of the incorporation act requiring cities of the fifth and sixth class to make an effort to agree, while all other persons are exempt from such condition, is in plain and direct conflict with both of these constitutional inhibitions. It destroys the uniform operation of a general law, and is special in a case where a general law not only can be made applicable, but in which a general law had been enacted, and in which there is no conceivable reason for discrimination." City of Pasadena v. Stimson, 91 Cal. 238, 28 Pac. 604.

This case sustains in principle the contention of plaintiffs in error now under consideration, for if the invidious limitation upon the right to take property rendered that statute void, a fortiori should the more important and invidious distinction made in the proviso to section 1241 C. C. P. render that statute void, when challenged by the owner whose property is being taken. In other words, the courts should be at least as

diligent in protecting private property from an illegal taking as in promoting the taking of private property for public purposes.

It seems unnecessary further to pursue this subject; for nothing could possibly be more unjust, unequal, unreasonable or a greater denial of equal justice than the denial to one set of persons of a right to *any hearing* upon a vital question of property rights while according to other sets of persons *similarly situated in every respect* the right to a full *judicial hearing upon the same identical questions.*

This goes much further than the possible right (which we do not concede) to deprive *all equally situated* of a hearing; for that is not the case.

We feel apologetic for thus restating and thus further urging so plain a consequence.

The Legislature of California Has Entrusted the Matter of Condemnation to Its Judiciary.

According to the decision of the District Court of Appeal in these cases, the Legislature of California has provided at least two distinct methods of procedure for acquiring private property *by a county* for public road purposes, viz: One by what is commonly known as the "viewer" method, where the property owner is accorded a full opportunity to be heard before the Board of Supervisors; and the other initiated by a direct *ex parte* resolution of that Board.

Upon this matter, the District Court of Appeals in deciding these cases said:

"Appellants insist that such rulings constituted fatal error for the reason that the powers conferred by law upon the board of supervisors to establish public highways are those *only* embodied in sections of the Political Code numbered 2681 to 2689, inclusive, which procedure therein prescribed is designated the "viewer" method and not infrequently adopted by counties in acquiring lands for highways; hence the resolutions of the board of supervisors authorizing the condemnation suits were not sufficient to confer jurisdiction upon the trial court, from which fact it follows that all proceedings had pursuant to such resolutions were void, including the commencement of the actions and the judgments and orders appealed from. It is unnecessary to enter upon an extended discussion of appellant's voluminous brief and argument in support of this point. Suffice it to say the identical question, involved in the case of *Adamson v. County of Los Angeles,* reported in volume 34, California Appellate Decisions, page 888, was decided adversely to appellants by the District Court of Appeals for the First District, and a transfer of the case denied by the Supreme Court. In that action Adamson, as a taxpayer, set forth in his complaint the proceedings had and taken by the board of supervisors in the acquisition of the property in question, and, insisting the entire proceedings for condemning the same were unauthorized and void, sought to have the county enjoined from proceeding with construction work in the 'Main Road' case. In deciding the case the court said: '*The provisions of article VI of chapter 2 of title VI of the Political Code, comprising sections 2681 to 2698 thereof,* do not purport to be exclusive, and may not be held to be so in view of the express grant of power *embodied in sub-division 4 of section 2643 above quoted,* and of the even more comprehensive enumeration of the gen-

> eral permanent powers of boards of supervisors *contained in section 4041 of the Political Code by which* such boards are expressly authorized 'to acquire and take by purchase, *condemnation* or otherwise land for the uses and purposes of public roads, highways and so forth.' The contention of appellant in the Adamson case was identical with that here urged; the argument of appellant there was identical with the argument made in the instant cases; and the adverse decision of the court in that case must be deemed determinative of the same question presented in these appeals." (Trans., pp. 1422-4.)

In other words, the proceedings in the cases at bar were taken under the authority held to have been conferred upon Boards of Supervisors by Sub-division 4 of Sections 2643 and 4041 of the Political Code, which, as also held by the State Appellate Court, contemplated and authorized a procedure different from and independent of the "viewer" method prescribed by Article VI of Chapter II, Title VI of that Code.

So much of Section 2643 of the Political Code of California as is pertinent here, is as follows:

> "The boards of supervisors of the several counties of the state shall have general supervision over the roads within their respective counties. They must by proper order: * * *
>
> "4. *Acquire the right of way over private property for the use of public highways,* and for that purpose require the district attorney to institute proceedings, under title 7, part 3, of the Code of Civil Procedure, and to pay therefor from the general road fund or the district road fund of the county."

So much of Section 4041 of said Political Code, as is pertinent here, is as follows:

> "The boards of supervisors, in their respective counties shall have jurisdiction and power, under such limitations and restrictions as are prescribed by law: * * *
>
> "4. BUILD ROADS. To acquire and take by purchase, *condemnation* or otherwise land for the uses and purposes of public roads, highways, boulevards, turnpikes, and other public ways, and to lay out, maintain, control, construct, repair, and manage public roads, boulevards, highways, turnpikes and other public ways, and to incur a bonded indebtedness for any such purposes; * * *"

Both of the Sections quoted in this behalf contemplate the acquisition of the property sought by "*condemnation*"—Section 2643 expressly by "proceedings under Title 7, Part 3 of the Code of Civil Procedure," and Section 4041 inferentially by similar proceedings, as the portions of the Code of Civil Procedure referred to constitute the only provisions in the laws of California for "condemnation" proceedings.

Title 7, Part 3 of the California Code of Civil Procedure embraces Sections 1237 to 1264 of that Code, both inclusive, and including, of course, Section 1241 and its specific and questionable *proviso* in Sub-division 2 thereof; and prescribes a *purely judicial* procedure for determining the various issues involved in any proceeding for the condemnation of private property for public use.

Therefore, the proviso added to Sub-division 2 of Section 1241 of the Code of Civil Procedure in 1913, should not be construed as an enactment into the *judicial* proceeding of an arbitrary *legislative* mode of

taking private property for a public use, but as an attempted injection into the *judicial* proceeding provided *of a rule of evidence* to be applied, under the discriminatory circumstances prescribed, in the *judicial* consideration by the Court of the issues entrusted to it by the Legislature.

Thus construed, according to its clear intent, as exemplified by the history of condemnation procedure in California, it is demonstrably unconstitutional under the authorities cited and discussed at length at pages 38, *et seq.*, of our opening brief. No repetition of those authorities, nor the citation of any additional ones to the same effect is necessary. They are clear, convincing and conclusive.

The California Code provisions prescribing the *judicial* procedure in eminent domain, *to which all statutory provisions of this state concerning the acquisition of private property for public use lead, and which must be ultimately conformed to before any private property can be condemned for public use,* with the exception of the indefensible *proviso* of 1913, have been substantially the same since their original enactment.

Section 1241 of the California Code of Civil Procedure, as enacted in 1872, when the California Codes were adopted, reads as follows:

> "FACTS NECESSARY TO BE FOUND BY COURT BEFORE CONDEMNATION. Before property can be taken, it must appear:
>
> 1. That the use to wnich it is to be applied is a use authorized by law;
> 2. That the taking is necessary to such use;
> 3. If already appropriated to some public use,

that the public use to which it is to be applied is a more necessary public use."

Sub-divisions I and II remained as enacted, without amendment until 1913, when the offensive *proviso* was added attempting to *prescribe a rule of evidence* FOR THE COURT in its *judicial* consideration and determination of *the necessity for the taking.*

That is, practically from the beginning of things in California, *even before the adoption of the present California Constitution of 1879,* the Legislature entrusted *to the Courts,* and has ever since *left with the Courts,* the power *judicially* to determine this vital question and the issues bearing upon it.

The only effect of the *proviso* of 1913 was not to deprive the Court of its *jurisdiction* in this behalf, but merely to prescribe—or attempt to prescribe—for it a *rule of evidence* to be followed in determining the questions entrusted to it under the certain peculiar segregated circumstances mentioned in the *proviso.* Except in this particular *restricted instance* named in this *proviso,* the unlimited and unrestricted power to judicially hear and determine all of these issues remains with the Court.

The Constitution of 1879 continued in force "until altered or repealed by the Legislature" all laws "not inconsistent therewith." (Sec. I, Art. 22, California Constitution.)

Thus this *judicial* power conferred by the Legislature upon the Courts in matters of eminent domain was continued in force by that Constitution.

It therefore became and is fundamentally embedded in the laws of this State pertaining to the taking of private property for public use; and its continued ex-

istence was and is recognized by and definitely embedded in the California Constitution by the Amendment of November 5, 1918 (Sec 14 of Art. I of that document) which expressly provides for security against damages for the taking of property for a public use when there is "an *adjudication* that there is no necessity for taking the property."

It is true that this Amendment was adopted after the commencement of this action, which was commenced on October 14, 1916 (Trans. Fol. Page 44), but it was adopted before the commencement of the trial of these cases and was in full force at the time of their trial, and irrespective of the date of its adoption it is a constitutional recognition by the people of the State of California of the *judicial* nature of the condemnation proceedings confided by the Legislature throughout the legal history of California to the Courts.

FOURTH.

THE STRIKING OUT OF THE SPECIAL DEFENSES PREVENTED THE PLAINTIFFS IN ERROR FROM RAISING THE QUESTION WHETHER THE LAND SOUGHT TO BE CONDEMNED WAS BEING TAKEN FOR A PUBLIC USE AUTHORIZED BY LAW.

The theory upon which the Defendant in Error builds its argument upon this branch of the case appears to be this: The Plaintiffs in Error were allowed to introduce evidence bearing on the question of public necessity for the projected public improvement; therefore,—regardless of what else may have taken place at the trial, regardless of what rulings may have been

made upon the pleadings,—because Plaintiffs in Error were allowed to introduce the evidence above referred to, they were accorded every right to which they are entitled. It might be well to look again to the record upon this point. At the very outset of the proceedings Plaintiff in Error, May K. Rindge, set up as a separate defense matter which alleged in substance that the road sought to be condemned is isolated; that it is wholly within the boundaries of what is practically one property; that it is not necessary for the use of, nor desired by, but strenuously opposed by the owners of such property and that "IT COULD AND WOULD AFFORD NO REAL OR GENUINE SERVICE TO ANY PART OF THE PUBLIC FOR ROAD PURPOSES IN ANY TRUE SENSE OF SUCH PURPOSES and would not and could not furnish any way of necessity or convenience to the general public or for public use or travel; that the condemnation would be for private purposes and in contravention of the provisions of the Constitution of the United States and particularly in violation of the Fourteenth Amendment to said Constitution and would be void and without due process of law and would constitute a denial to the defendants of the equal protection of the law." (Tr., Vol. I, Fols. 303-315.)

Upon motion of the Defendant in Error the Court struck out these defenses, upon the ground that all of the matter asked to be stricken out, and each of the separate matters, are irrelevant and immaterial and constitute mere surplusage and conclusions of law of the pleader and none of the matters asked to be stricken out are matters of fact, ultimate or otherwise, nor are any of them allegations upon which the Court would have the right or the power to admit or receive evi-

dence. (Tr., Vol. I, Fols. 653-56; Tr., Vol. I. Fols. 303-315.)

Counsel for Defendant in Error state on page 69 of their brief that Plaintiffs in Error do not claim that the evidence demonstrates that the proposed undertaking was for a private use, nor that Plaintiffs in Error were denied the right to prove that the use was not public, nor that defendant in error did not prove that the use was public. Counsel then go on to state that because Plaintiffs in Error were given every latitude in an attempt to prove that the use was private, consequently Plaintiffs in Error are in no position to complain merely because their attempt was unsuccessful. At this point there is a sharp feature of the case which appears to overshadow nearly all the others. Counsel for Defendant in Error seem to lose sight of the fact that the Court, before any evidence was admitted on the question raised by the special defenses stricken out, had stated in advance that any such evidence was immaterial and irrelevant. Can it be seriously contended for a moment that the mere introduction of evidence, after such a ruling as that, which was early made in the case, could by any possibility accord to the Plaintiffs in Error the rights to which they are entitled? The Defendant in Error is obliged to take one side or the other of this position. It cannot occupy both sides. If the special defenses were in fact immaterial and irrelevant, then no evidence whatever should have been received under them. If the special defenses did contain matter which was relevant and material then they should have remained in the record. But it is not and cannot be, and, we submit, never has been due process of law, or at all consonant with the Anglo-Saxon system of jurisprudence, that the Court should state in advance that

certain evidence would not be considered, should later receive that evidence without changing its form or ruling in any respect and then be allowed to take the position and maintain it that its action in receiving the evidence accorded to the party originally setting up the pleading, which was stricken out, every right to which he was entitled.

On page 70 of their brief counsel quote from the opinion of the District Court of Appeals a portion which states that every material issue tendered by the so-called separate defense was raised by the pleadings which remained in the record and that in the trial defendant (Plaintiffs in Error) were accorded every opportunity, of which it availed itself, in offering evidence touching every matter contained in the pleadings so stricken out by order of the Court. Counsel then proceed as follows:

> "The state court having found the fact to be as stated in this quotation, this court will accept such statement as true."

We submit that a careful study or even a single reading of the opinion of the Court of Appeals will indicate not that the Court of Appeals found the facts above stated to be true but simply that the Court of Appeals, because it held that Section 1241 meant what it said and that the resolutions were conclusive evidence, merely and explicitly refused to review the evidence introduced in pursuance of the rulings of the trial Court on the question of necessity. (Tr., Vol. 3, Fols. 4266-4282.)

Defendant in error goes on to state that the questions of necessity and of public use were issues under paragraphs three and four of the Complaint, paragraph

three of the amended answers of May K. Rindge and Rindge Company and the special defense which remained in the pleadings.

In this connection it has been thought advisable to set out in full the issue which was framed and upon which the hearing proceeded and also the issue which was offered and refused.

Reference is made to Transcript, volume 1, folios 48-50, 288-291, 324-327, 301-302, 337-338.

THE ISSUE FRAMED.

Complaint.	*Answer.*
III.	III.
That it is necessary for county purposes, and the public interest, convenience and necessity requires the acquisition of an easement in and over the properties hereinabove particularly described for the establishment and maintenance of a public highway as prayed herein.	That she denies that it is necessary for county purposes or purposes whatever, or at all, or that the public or any interest or convenience or necessity or either requires the acquisition of an or any easement in or over the properties, or any part or portion thereof, described in paragraph II of the said complaint for the establishment of a public or any highway either as prayed for in said complaint, or otherwise at all.
	Separate Answer and Defense.
	IX.
	That she is informed and believes, and upon her in-

formation and belief alleges, that there has been no consideration nor determination by the Board of Supervisors of the County of Los Angeles, State of California, of any of the matters or things alleged in the complaint herein as amended, and particularly of the matters and things alleged in paragraph II of said complaint as amended, and that the said alleged resolutions, referred to in paragraph II of the said complaint as amended, were arbitrarily adopted by the said Board of Supervisors of Los Angeles County, without any consideration of the matters or things therein contained, and without the exercise of any discretion therein, and well knowing that there was no room for the exercise of any discretion therein, but on the contrary knowing full well that all of the property proposed to be taken for a public road and highway and to be condemned as said resolution set forth and as in said complaint as amended alleged was not, and could not be, necessary for any public use of any kind or char-

acter whatever and particularly in this, that it is located wholly and solely upon and within the confines of private property and cannot under any circumstances afford any accommodation of any kind or character to the travelling public, or any part or portion thereof, and that, therefore, the taking of the same for any alleged highway purposes would be without due process of law and in violation of the provisions of the Fourteenth Amendment of the Consitution of the United States, and that the taking of said property under said resolutions for a public highway or other purposes would be void, and would be a denial to this defendant and the ultimate owners of said property sought to be condemned of equal protection of the laws under the Constitution of the United States, and would contravene the Fourteenth Amendment to the said Constitution of the United States.

THE ISSUE OFFERED AND REFUSED.

VI. of the further and separate answer and defense: That there was not at the commencement of this action, and is not now, any public road or way of any kind or character either upon that portion of said Malibu Ranch located in Los Angeles County or upon that extension of the same in Ventura County; and that the said proposed road or highway sought to be condemned and taken would be located wholly and solely upon that portion of said Malibu Ranch situated in Los Angeles County, would end and terminate upon the private property of defendant Rindge Co. at the Ventura County Line; would have no laterals or outlets or feeders of any kind or character; would be located wholly and solely, and give access wholly and solely to the private ranch property the defendants May K. Rindge and Rindge Co.; and would not and could not furnish any way of necessity or convenience to the general public or for public use or travel.

It will be seen that a definite specific issue was tendered and refused as to the real character of the use of this road and that the court, by its ruling, took the ground that no evidence under that issue would have any effect upon the court's decision. It will be observed that there was not left anywhere in the record any issue as to the road in question being located wholly upon one property and that there is left nowhere in the record an issue as to whether the alleged road would or could furnish any way of necessity or convenience to the general public or for public use or travel.

Paragraph 14 of the amended answer and separate defense, which was allowed to remain in the record, does not make an issue upon this point but only upon whether or not the Board of Supervisors had any knowledge of the facts therein set out.

It is, of course, elementary that there must be a clear record in all proceedings and it is one of the elements of due process of law that such a record be had. There is a doctrine long embedded in Anglo-Saxon jurisprudence, called the Doctrine of the Prescriptive Constitution, to the effect that there can be but one record of a proceeding; that that record is jurisdictional and that if the record is not the right record jurisdiction has failed entirely. As has several times before been stated by us in our brief, there is no record hereunder which the court would be under the slightest duty or have any right to enter into consideration of any evidence upon the issue of whether this road was not in fact a public road, or to give any judgment thereon. The fact that evidence was heard, we submit, does not cure the error, since the court had in advance declared that such evidence

would be immaterial and irrelvant and that consequently the court must be assumed to have considered such evidence when it was introduced.

Counsel for the defendant in error, with apparent earnestness, refer to Section 1238 of the Code of Civil Procedure of California, as indicating that the power of eminent domain may be exercised in behalf of the following public uses: * * * Highways. There is not and cannot be any dispute as to that, but there has been throughout this case, in every court in which this case has been heard, a very clearly cut dispute as to whether this particular road was a highway. It has been throughout the contention of the plaintiffs in error that it was not a highway, that it was not a public utility, but that it was a private utility. Courts are a part of our political organization for certain specific purposes. One of the purposes of their existence is the determination of just such a question as this. The court of first instance in California declined to have any issue upon this matter, denied the plaintiffs in error not only due process of law, but any process whatever in regard to that particular and most important question. A history of this entire matter, as set forth in the record, and particularly as referred to in the statement of the case of this reply brief, shows beyond any doubt what the situation was and is in regard to the Malibu Ranch. The County, State and Federal authorities have been endeavoring since December 3, 1907, to accomplish one object, namely, a road from Santa Monica, which is near the eastern boundary of the Malibu Ranch, into, through and over the said Ranch to the Ventura County Line, where the road will terminate in a private property, being property of plaintiffs in error in Ventura County. Two separate suits were brought by the state authori-

ties and by the Federal authorities, respectively. Each of these suits terminated, after long litigation, in favor of the plaintiffs in error, one in 1913, one in 1917. Yet before the suit in the state court was terminated by a decision in favor of the plaintiffs in error on April 7, 1917, the County of Los Angeles had started these condemnation proceedings, in pursuance of the *ex parte* resolutions passed in August, 1916. Particular and earnest reference is made by the plaintiffs in error to the opinion of the state court in People v. Rindge (Tr., vol. Fols. 837-903) and to the opinion of the United States District Court in U. S. v. Rindge (Tr., Vol. I, Fols. 759-837).

It is claimed by the plaintiffs in error and is not disputed that those few persons who now occupy lands in the mountains to the north of the Malibu Ranch and to the west of the Malibu Ranch, took up those lands in the interval between 1905 and 1917 and proceeded through and across the Malibu Ranch to reach those lands, at a time when it was impossible for the owners of the Malibu Ranch to prevent such passing across their property, because either the state court or the Federal court, or both courts, had injunctions in force against the plaintiffs in error which made it absolutely necessary for them to allow such persons to come and go across the Ranch property (Tr., Vol. I, Fols. 741). The true nature of this entire proceeding can best be understood by a careful reading of the opinion of the court of first instance on the question of necessity (Tr., Vol. III, Fols. 426-472). Special attention is directed to Folios 4065-4067:

> "If for no other purpose than to afford outdoor life and recreation to the people of Los Angeles

County by a scenic highway we believe the proposed Malibu road to be a public necessity. As proposed said road traverses a stretch of land the natural beauty of which is unique and diverse. To the south can be seen the broad Pacific, with its variegated waters and many shaped islands, while immediately to the north stand the majestic Santa Monica mountains; up hill and down dale the road winds its way through wooded canyons and across verdant mesas, ever revealing to the traveller a panorama of rare charms. It is easy to conceive the pleasure of recreation and the incalculable benefit that will be afforded the public by the building of this main Malibu Road. A public necessity for a road may exist although the road may serve no purpose of business or duty. It is sufficient that it is an exigency for the exercise of a lawful public right, although it be only for the purpose of amusement and recreation, as a way for travel to a public park or common, to a place of historic interest or remarkable or pleasing and natural scenery."

This is in the face of the fact that there is not a line of testimony in the entire record showing, or claiming or indicating that the purpose of the county in condemning this road was to make accessible to the population scenic beauties. It seems to follow as a necessary conclusion, from the opinion of the court of first instance, and from the entire record, that this road is being condemned over the Malibu Ranch, not for the purposes of serving the public or for any purposes of travel or for connecting with any other roads, but simply to have a drive into the Ranch and a drive out. In other words, it is making the Ranch a park without paying for it as a park. It is taking property of the plaintiffs in error for park purposes, under the guise of taking only a portion for highway purposes,

and it is taking the property of the owners of the Ranch without any process of law whatever.

Pleadings are the judicial means of investing a court with jurisdiction of a subject-matter to adjudicate it. The elemental foundation is stated in the ancient maxim of the Roman law, "*De non apparentibus et non existentibus eadem est ratio.*" (What is not juridically presented cannot be judicially considered, decided or adjudged.) The application of these principles to the present case will demonstrate that the court of first instance, as appears from the record and the pleadings, and particularly from the quotations from the pleadings hereinabove set out, never had before it for decision the question which we are now discussing, namely, whether or not the so-called road or highway was in fact a road or highway, or merely a sham and a pretense. There is in the record at the present time merely an allegation by the county, and a denial by the property owner that the public interest, convenience and necessity require the acquisition of an easement over certain named property. The pleadings which were set up by the plaintiffs in error and which were stricken from the record by the court set out in detail facts, not conclusions of law, which facts, if true, would have constituted a demonstration that the alleged road was not in fact a road but only a sham and pretense. It cannot be too strictly emphasized that the action of the court in striking out those pleadings left no issue on the most important question in the case. Consequently the court had no jurisdiction whatever to give any decision upon that question for the pleadings are jurisdictional and the observations off and outside the record, which any court may choose to make, are not effectual as binding

the parties to the suit. The only issue left in the pleadings when the court had disposed of the motion to strike out, was the one which might have been satisfied by proving that the proposed improvement was a highway because the legislature called it such, but there was not left in the pleadings, the mandatory record, anything which the court could use as a basis for the determination of the question which it later undertook to decide, namely, that the road planned to be built across the owners' property would and could furnish any way of necessity or convenience to the general public or for public use or travel, because that issue was tendered by the plaintiffs in error and was deliberately refused by the court when it granted the motion of the defendant in error to strike that defense from the pleadings.

> "Due process of law is the exercise of administrative power, according to certain fixed and fundamental principles. Due process of law in judicial procedure is the establishment of judgments and orders in proceedings conducted upon fundamental principles of procedure, these proceedings being properly evidenced by the right of record." Equity in Procedure, William T. Hughes, 1911, p. 35.

Citing Windsor v. McVeigh, 3 Gr. & Rud; 93 U. S. 274; Rushton v. Aspinwall, 1 Smith's Leading Cases (Edition of 1885), 1445; Doug. 679, 99 Eng. Reprint 430; Nalle v. Oyster, 230 U. S. 165, 57 L. Ed. 1439.

In Clark v. Dillon, 97 N. Y. 370 (1884), the complaint alleged in substance that the defendants excavated a pit in a city street and left the same unguarded, by reason of which the plaintiff's wife fell in and was injured. The answer contained three de-

fenses: First, contributory negligence; second, settlement and compromise; third, a denial of each and every other allegation in the complaint not before specifically "admitted, qualified, or denied." It was held that the answer did not raise an issue on the allegations of the complaint that defendants made the excavation which caused the injury and that the same was in a public street, and consequently plaintiff was not required to prove them at the trial. See Equity in Procedure, Wm. T. Hughes, 1911, pages 35-52; esp. p. 35; Nalle v. Oyster, 230 U. S. 5, 57 L. Ed. 1439; Windsor v. McVeigh, 3 Gr. & Rud. 93 U. S. 247.

Taking, for a moment, the theory of the defendant in error, that only the question of the nature of the use is a question for the court, it is apparent from an inspection of the statutes that if the work for which the property is proposed to be taken is not a public utility or a public improvement, is not a public use at all, then the later provisions of Section 1241 have no application. Consequently the land owner had a right to have this question determined by the court itself upon the court's own findings of fact. The court could not determine whether the use was one authorized by law, namely, a public use, until it had been informed of the facts surrounding and affecting the question. It was not enough that the work was called a highway. It was not enough that the work was a road over which the public could have a theoretical right to travel. If in truth and in fact it was a mere guise of the parties for taking the landowner's property against his will, then the first condition of the statute had not been complied with. This is exactly what the landowner pleaded and offered to prove, but was refused the right of having an issue thereon.

The finding of the legislative body had nothing to do with that question, assuming for the moment that it had full power to decide the questions of necessity and location, because the time had not come when the legislative body could act. The legislature could not take from the court the right to determine for itself whether the proposed work was in its nature a public utility, and in order to determine whether it was in its nature a public utility or only a sham and pretense under the name of a public utility, the court had a right to determine the facts as well as the law, in so far as necessary in order to determine whether the first condition had been complied with, namely, whether the use is a public use, or in the words of Section 1241, "A use authorized by law," a use for which one's property may be taken from him against his will.

It is not enough, we repeat, that the thing for which the property is to be taken is *called* a highway. Highways, as such, belong to the class of works of which it may be said that taking land for its use is taking land for a use authorized by law. But if an owner can prove that the thing called a highway is not such in fact but only in name, should he not be allowed to do so? We submit that it is not enough to constitute a road or a highway, that the public have a right to travel over it. It is not possible that the city or the county may turn the private driveway in a private estate into a public highway and justify it on the sole ground that the public may use it if they wish to,—even though its use would be of no convenience to the public unless it were to gratify their curiosity. We submit that it is not a use authorized by law for which the land of the owner may be taken against his will,

that a road be laid out into a private estate, merely to enable curious individuals to drive in and drive out and see what kind of a place the owner has.

We submit that one of the most important questions presented by this record is the one discussed under the final heading of this brief. We feel that in the time at our disposal for oral argument it is almost impossible to present adequately anything more than the most striking features of these appeals. Still the crux and the elements of the entire case can be understood and appreciated by a single reading of the four opinions, which combined do not make more pages than are often used in disposing of a single one of the more important cases which come before this Court. To the property owner as well as to the County of Los Angeles, this case is of the utmost and vital importance. The four opinions to which we refer are as follows:

(1) Opinion of R. S. Bean, District Judge, in U. S. of America v. Rindge, *et al.* (Tr. Vol. 1, Fols. 759-837.)

(2) Opinion of Justice Henshaw, in People of the State of California v. May K. Rindge, *et al.* (Tr., Vol. I, Fols. 837-903.)

(3) Decision of the Superior Court of the State of California in and for the County of Los Angeles, on Questions of Necessity. (Tr., Vol. 3, Fols. 425-472.)

(4) Opinion of the District Court of Appeals, Second Appellate District, State of California, Division One, in the present proceedings. (Tr., Vol. 3, Fols. 4243-4294.) Printed as an appendix to this brief p. 68, for the convenience of the Court, this opinion being challenged by the writ of error herein.

CONCLUSION.

We are unable to conclude this brief without noticing the remark of counsel for Defendant in Error to the effect that this is one of the many cases which should never have come before this Court. We respectfully submit that those portions of the record which we have particularly pointed out, and particularly and especially the opinion of the District Court of Appeals, furnish every reason and every justification for bringing these cases before this Court. Our contention is that one of the greatest functions of the Supreme Court of the United States is the protection of the private citizen from the informal and shifting kind of proceedings which this record discloses, and from the systematic attack upon his rights which is also disclosed by this record. We can easily see that the Defendant in Error would prefer that these cases should not have been brought to the attention of this Court, but we feel that our clients have only exercised their rights in bringing them there, where, at last, they may be assured of a review of all former proceedings and a test thereof, guided and controlled by those ancient principles upon which our form of Government was founded, but which appear at times to have been overlooked or forgotten by the tribunals from whose rulings we have appealed.

To summarize our arguments:

I.

This Court has jurisdiction for the reason that the Federal question involved was presented at the outset, insisted upon throughout all the proceedings and that

it controls and overshadows all other elements in the case.

II.

California Code of Civil Procedure, Section 1241, is repugnant to the due process clause of the Fourteenth Amendment, because it takes property without due process of law, because it denies to the property owner the equal protection of the law, and because it undertakes to make the Court a mere registering agent of the will of the legislature.

III.

Plaintiffs in Error were denied the equal protection of the law for the reason that the classification made by Section 1241 is wholly arbitrary and unreasonable.

IV.

The striking out of the special separate defenses was not cured by the introduction of testimony to prove that the use was not public and the Court, by striking out the special separate defenses, deprived itself of jurisdiction to decide the issue of whether the so-called public utility was in fact a public utility or only a sham and a pretense.

For the above reasons Plantiffs in Error pray that the judgment in each case should be reversed.

Respectfully submitted,

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APPENDIX.

OPINION OF THE DISTRICT COURT OF APPEAL.

The above-entitled actions were instituted by the county of Los Angeles to condemn certain lands described in the complaints therein for use as highways. In each case an interlocutory judgment as prayed for was rendered for the plaintiff, followed by a final order of condemnation, from which judgment and order so rendered in each case the defendants therein have appealed.

In the first above entitled case, and which appellants designate the "Main Road" case, the action was to condemn a strip of land from a public highway at a point on the southeasterly boundry line of the Malibu ranch, and through said ranch for a distance of some twenty miles or more to the easterly boundary line of Ventura county, at which point the proposed road terminated upon private land. In the other action, No. 3533½, it was sought to condemn land for a lateral highway beginning at a point on the proposed "Main Road" and running thence easterly to the east boundary line of the Malibu ranch and terminating likewise upon private lands owned by one Decker, which highway appellants designate as the "Alisos Canyon Road." The questions involved in each case are the same and the grounds upon which appellants base their claim for a reversal are identical.

In both cases the proceedings were instituted by a resolution adopted *ex parte* and without a hearing accorded defendants by the board of supervisors of Los Angeles county. Omitting the description, the resolution initiating the proceeding as to the "Main Road"

case (that adopted in the other being of like form and effect) is as follows:

"Whereas, the public necessity and interest of the people of the county of Los Angeles do require that a certain highway be constructed in said county over and across those certain parcels of real property hereinafter described, and for that purpose and for such public use it is necessary that those certain pieces or parcels of real property hereinafter described be acquired by said county by condemnation namely: the following described property located in the county of Los Angeles, state of California, to-wit:

"(Description of forty-foot right of way strip, and also of some 146 side parcels.) * * * excepting so much of said land as is now included within any public highway, alley or lane.

"Further reference is hereby made to said county surveyor's map No. 8070, on which the location of all parcels of land herein described is accurately shown.

"Now, therefore, be it resolved, and it is the finding and determination of this board, that the public interest and necessity require the acquisition by the county of Los Angeles of those certain pieces or parcels of land hereinbefore described for a public purpose, namely: for public highway purposes, and for the construction and completion of a public highway thereover; and

"Be it further resolved, that those certain pieces or parcels of land herinabove described be condemned for a public purpose, namely for a public highway and the construction and completion thereof, and the county counsel of the county of Los Angeles is hereby directed to institute proceedings in the Superior Court of the

state of California in and for the county of Los Angeles for the condemnation of those certain pieces or parcels of real property hereinabove described for public highway purposes and to take all steps necessary for the condemnation of said pieces or parcels of land in the name of said county;"

in accordance with which the county counsel instituted the actions for the condemnation of the parcels of real estate described therein.

Demurrers interposed by the defendants to the complaints were overruled. Appellants insist that such rulings constituted fatal error for the reason that the powers conferred by law upon the board of supervisors to establish public highways are those *only* embodied in sections of the Political Code numbered 2681 to 2698, inclusive, which procedure therein prescribed is designated the "viewer" method and not infrequently adopted by counties in acquiring lands for highways; hence the resolutions of the board of supervisors authorizing the condemnation suits were not sufficient to confer jurisdiction upon the trial court, from which fact it follows that all proceedings had pursuant to such resolutions were void, including the commencement of the actions and the judgments and orders appealed from. It is unnecessary to enter upon an extended discussion of appellants' voluminous brief and argument in support of this point. Suffice it to say the identical question, involved in the case of *Adamson v. County of Los Angeles*, reported in volume 34, California Appellate Decisions, page 888, was decided adversely to appellants by the District Court of Appeal for the First District, and a transfer of the case denied by the Supreme Court. In that action Adamson, as a

taxpayer, set forth in his complaint the proceedings had and taken by the Board of Supervisors in the acquisition of the property in question, and, insisting the entire proceedings for condemning the same were unauthorized and void, sought to have the county enjoined from proceeding with construction work in the "Main Road" case. In deciding the case the court said: "The provisions of article VI of chapter 2 of title VI of the Political Code, comprising sections 2681 to 2698 thereof, do not purport to be exclusive, and may not be held to be so in view of the express grant of power embodied in sub-division 4 of section 2643 above quoted, and of the even more comprehensive enumeration of the general permanent powers of boards of supervisors contained in section 4041 of the Political Code by which such boards are expressly authorized 'to acquire and take by purchase, *condemnation* or otherwise land for the uses and purposes of public roads, highways and so forth'." The contention of appellant in the Adamson case was identical with that here urged; the argument of appellant there was identical with the argument made in the instant cases; and the adverse decision of the court in that case must be deemed determinative of the same question presented in these appeals.

Another alleged erroneous ruling upon which appellants claim a reversal is that the court, upon defendants' motion for a new trial, denied it upon terms, the effect of which was an exercise by the court of the functions of the jury, by reason of which defendants were deprived of the constitutional right of having a vital element of damage determined by the jury. It appears that, among other things, the jury found it would require 29 miles of fencing to fence the Rindge Company's land along the roadway and that the cost

per mile would be $650, aggregating the sum of $18,850. On motion for new trial one of the specifications of error was that the jury improperly determined the number of miles of fencing which would be required, and it being made to appear to the court that, instead of 29 miles as found by the jury, it would require 31½ miles, the cost of which would be $1,625 more than that found by the jury, the court, as a condition of its order denying the motion for a new trial, made an order requiring that plaintiff consent to the increase in the judgment; whereupon counsel for plaintiff filed a written stipulation consenting to such increase in the amount of defendants' compensation, and thereupon the court made its order denying the motion for new trial. Upon the same contention, based upon the same facts and supported by the same argument made by the same attorneys, the court in the Adamson case, *supra,* held that in an action by a county for the condemnation of land for a public highway the county counsel, as attorney representing the county, has authority on a motion for a new trial to consent to an order increasing the amount of compensation awarded to the defendant by the verdict of the jury due to an error in computing the amount of required fencing of defendant's land along the roadway.

In support of its case plaintiff introduced in evidence the resolution, copy of which is hereinbefore set out, together with a minute entry of the board showing that it was adopted by a vote of more than two-thirds of the members thereof. Thereupon plaintiff rested and defendants moved for a nonsuit. The motion was denied, and the ruling is assigned as error.

Section 1241, Code of Civil Procedure, provides that

before property can be taken by condemnation it must appear: "1. That the use to which it is to be applied is a use authorized by law; 2. That the taking is necessary to such use; provided, when the legislative body of a county * * * shall, by resolution or ordinance, adopted by vote of two-thirds of all its members, have found and determined that the public interest and necessity required the acquisition, * * * by such county * * * of any * * * public improvement, and that the property described in such resolution or ordinance is necessary therefor, such resolution or ordinance shall be conclusive evidence; (a) of the public necessity of such proposed * * * public improvement; (b) that such property is necessary therefor, and (c) that such proposed * * * public improvement is planned or located in the manner which will be most compatible with the greatest public good, and the least private injury."

Since the resolution declaring the land necessary for the proposed highway was adopted by a two-thirds vote of the members of the board of supervisors, it must, as provided by the statute, be accepted as conclusive evidence of the necessity for taking the property, unless, as claimed by appellants, that as so construed it is unconstitutional. This contention is based upon the claim that the determination of the facts so found by the resolution were in their nature judicial, and since the action of the board in adopting the resolution was had *ex parte* and without notice or hearing given to appellants, the effect of the judgment based thereon was to deprive them of their property without due process of law. That the purpose for which the property was sought to be condemned is a public use, admits of no question. (Sec. 1238, Code Civ. Proc.)

When the use is public, the necessity of appropriating any particular property therefor is not a subject of judicial cognizance, but one which appertains to the legislative branch of the government, and the right to so appropriate may be exercised by the state or such subordinate bodies to which by legislative grant the power is entrusted. See Lewis on Eminent Domain (3rd ed.), Secs. 369, 595 and 596; Cooley on Constitutional Limitations, p. 777; *Secombe v. R. R. Co.*, 90 U. S. 108; *Miss. etc. Boom Co. v. Patterson*, 98 U. S. 403; *Water Works Co. v. Burkhart*, 41 Ind. 364; *Lamb v. Schottler*, 54 Cal. 319; *Wulzen v. Board of Supervisors*, 101 Cal. 15, and *People v. Smith*, 21 N. Y. 595; all of which are authorities in support of the proposition that, in the absence of constitutional provisions so requiring it—and there are none in this state—the Legislature may delegate to the boards of supervisors of the counties of the state the power to determine *ex parte* by resolution, as in the instant cases, the necessity for taking property for public use and make such resolution conclusive evidence of the facts enumerated in section 1241, Code of Civil Procedure. In Cooley's Constitutional Limitations, page 760, it is said that "a legislative act declaring the necessity, being the customary mode in which that fact is determined, must be held to be for this purpose 'the law of the land,' and no further finding or adjudication can be essential, unless the Constitution of the state has expressly required it." And at page 777 of the same work it is said that, while the question of necessity may be referred to a local tribunal or submitted to a jury to decide upon evidence, "the parties interested have no constitutional right to be heard upon the question, unless the state Constitution clearly and expressly

recognizes and provides for it." *People v. Smith, supra,* is authority for the statement that the Legislature "may allow the owner to intervene and participate in the discussion before the officer or board to whom the power of determining whether the appropriation shall be made in a particular case, or it may provide that the officers shall act upon their own views of propriety and duty, without the aid of a forensic contest. The appropriation of the property is an act of public administration, and the form and manner of its performance is such as the Legislature shall, in its discretion prescribe." In the case of *Board of Water Commissioners v. Johnson,* 84 Atl. 727, the court said: "But the respondents urge that they have never had the opportunity to be heard upon the question of necessity, and that for that reason there has not been due process of law. They were not entitled to such opportunity. It is well settled that, as related to the exercise of the power of eminent domain, all questions which are political in their nature and lie within the legislative province may be determined without notice to the owner of the property affected, and * * * the owner is not entitled to a hearing upon it as a matter of right." In *Wulzen v. Board of Supervisors, supra,* it is said: "The determination as to whether or not the right of eminent domain should be exercised and as to what lands are necessary to be taken in the exercise of that right, is a political and legislative question and not a judicial one. Its determination rests exclusively with the Legislature, or with such subordinate legislative bodies as it may be properly devolved upon, and the question of whether the exercise of the power is wise or not is one with which the judicial department has no concern." Property is held in private owner-

ship subject to the right of the state in its sovereign capacity to take it for public use; the only restriction upon such right being that it "shall not be taken or damaged for public use without just compensation having first been made to, or paid into court for, the owner." (Sec. 14, art. I, Const.) Hence, where the owner of the land sought to be condemned by the state for a use declared by law to be a public use is accorded his constitutional right to compensation for the taking he cannot question the procedure or instrumentalities which the Legislature has provided as a means for acquiring the property. Its motives or reasons for declaring that it is necessary to take the land are no concern of his. In our opinion, the provision of section 1241, Code of Civil Procedure, making the determination of the board of supervisors of the county conclusive evidence of the necessity for taking the land for a public highway, is not obnoxious to any provision of the State or Federal Constitution.

However, this may be, and contrary to the views herein expressed, the trial court agreed with defendants' contention that the resolution was not conclusive evidence of the facts so found, but did admit it as a sufficient *prima facie* showing of such facts, and upon this theory denied the motion for nonsuit. Thereupon, and after denial of their motion, defendants were given the widest latitude in offering a mass of evidence for the purpose of showing there was no necessity for the proposed highway, followed by plaintiff, which, in rebuttal, introduced a vast deal of evidence likewise touching the question of necessity for the improvement. Indeed, it appears from the voluminous record that no restrictions whatsoever were imposed upon

either party in the introduction of evidence touching the question. Under these circumstances and assuming the court erred in accepting the resolution even as *prima facie* evidence, nevertheless we cannot perceive how defendants were prejudiced by the circumstance, since the testimony which, according to appellants' theory, should have been produced during plaintiff's presentation of its case in chief was later in the trial supplied. The error is predicated solely upon the order in which the evidence touching the question was admitted. "It is well settled that an order denying a motion for a non-suit will not be disturbed, although the evidence at the close of plaintiff's case was so weak that it might properly have been granted, if upon the trial the defect is overcome by evidence subsequently introduced." (*Peters v. Southern Pacific Co.*, 160 Cal. 48; *Lowe v. San Francisco etc. Ry. Co.*, 154 Cal. 573.) Since both parties were permitted, after the ruling upon the motion, to introduce evidence, without restriction, touching the question of necessity, defendants could in no event have been prejudiced by the ruling.

As a separate defense the defendants May K. Rindge and Rindge Company alleged that all of the property which plaintiff sought to condemn was within the boundaries of the Malibu ranch in Los Angeles county; that while the ranch was owned in severalty by May K. Rindge and the Rindge Company, it was, and had been for more than twenty years, with knowledge of plaintiff, operated as a single ranch under one management and control; that the westerly end of said proposed highway terminates at and upon the boundary line between Los Angeles county and Ventura county upon

the Malibu ranch which, as owned by defendants, extends into Ventura county for a distance of —— miles, all of which is managed, operated and controlled by said defendants with the lands of said ranch so located in Los Angeles county; that there is no public road of any kind or character whatever within —— miles of the Ventura county end of said ranch, and the only means of egress and ingress to the westerly terminus of said proposed road is by private trails and ways; that said proposed road or highway, if condemned, would be located wholly and solely upon that part of the Malibu ranch situated in Los Angeles county and would end and terminate upon private property of the Rindge Company at the Ventura county line, and as constructed would give access wholly and solely to the private ranch property of defendants May K. Rindge and Rindge Company, and could not furnish any way of necessity or convenience to the general public; that the owners of said ranch have no need or desire for a public road thereon, which, if constructed, would be a constant menace and damage to their ranch property; by reason of which facts it is alleged the taking of said property for the purpose contemplated would be without necessity of any kind or right. Upon the grounds and for the reason that all of the matter so alleged as a separate defense was irrelevant, immaterial, surplusage and conclusions of law, plaintiff moved to strike the same from the answer. This motion was granted, and appellants assign the ruling as error. Counsel for appellants insist the special defense so pleaded was upon the theory that an isolated road within the boundaries of what is practically one property and not desired by the owners thereof and which

could afford no real service to any part of the public as a road, could not possibly be a public necessity for which condemnation would lie. While this contention is fully answered by the fact that the resolution was conclusive evidence of the taking being necessary, nevertheless, conceding such theory warranted by the alleged facts, it appears that every material issue tendered by the so-called separate defense was not only raised by the complaint and the answers thereto, but that in the trial thereof defendant, without objection or restriction, was accorded every opportunity, of which it availed itself, in offering evidence touching every matter contained in the pleading so stricken out by order of the court. There was no error in the ruling, but conceding as much, it is impossibe to perceive how defendants, under the circumstances, could have suffered any prejudice by reason thereof.

It appears that while the eastern terminus of the main road connected with a public highway, the western terminus thereof was at the boundary line separating Los Angeles county from Ventura county, at which point it connected with no road extending into or connecting with roads in said last-named county, and that the Alisos Canyon road, likewise extending from the proposed main road to the boundary line common to the Malibu ranch and the lands of one Decker, was not connected with a highway; and basing their contention upon these facts, appellants insist that the board of supervisors had no power to lay out highways terminating at county lines or points on private lands which did not connect with or intersect other highways affording means of continuous travel. There is no merit in contention. No such restrictions upon the power of

counties to establish highways are imposed by statute, and to hold that a county could not condemn lands for a highway to the line of another county unless there existed an established highway in such latter county with which to connect its proposed road would obvivously lead to embarrassment and difficulty in establishing highways from one county to another. (*Rice v. Rindge,* 53 N. H. 530.)

The use for which the property was sought to be condemned is declared by section 1239, Code of Civil Procedure, to be a public use. The resolution adopted by a vote of two-thirds of the members of the board of supervisors not only vested the court with jurisdiction of the proceedings for condemnation, but when received in evidence the finding and determination of the board as therein expressed, to the effect that the taking of the parcel of land described in the complaint was necessary for such public use and the proposed improvement located in the manner most compatible with the greatest public good and least private injury, was conclusive evidence of such facts; hence, while not prejudicial, any evidence touching such issue of necessity or hearings had before the board of supervisors other than the resolution, was immaterial. In no event, and from whatever angle the facts are viewed, are we able to perceive how defendants' substantial rights were prejudiced by any ruling of the court during the trial.

The judgments and orders are affirmed.

SHAW, *J.*

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

Rindge Company, a Corporation, May K. Rindge, Hueneme, Malibu & Southern Railway, a Corporation, and Hueneme, Malibu & Port Los Angeles Railway, a Corporation,
Plaintiffs in Error,

vs.

County of Los Angeles,
Defendant in Error.

Rindge Company, a Corporation,
Plaintiff in Error,

vs.

County of Los Angeles,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

Plaintiffs in error, Rindge Company and May K. Rindge, are the owners of an oblong tract of land, known as the Rancho Topango Malibu

Sequit, lying along the Pacific Ocean in the county of Los Angeles, California, about twenty-two miles in length along the ocean shore and varying from one-half to one and one-half miles in width.

On the 26th day of August, 1916, the Board of Supervisors of defendant in error, County of Los Angeles (the governing body of the county), without notice to or hearing given plaintiffs in error, by unanimous vote duly and regularly adopted a resolution determining that the public interest and necessity required the acquisition by the county of Los Angeles of a strip of land forty feet in width, running longitudinally through the above tract of land, for public highway purposes and for the construction and completion of a public highway thereover, determining that the strip of land therein described be condemned for such purposes and directing the county counsel of the county of Los Angeles to institute procedings accordingly. [Tr. Vol. I, fols. 667-676.]

On the 3d day of December, 1917, the same Board of Supervisors, without notice to or hearing given plaintiffs in error, by four-fifths vote duly and regularly adopted a similar resolution as to a strip of land forty feet in width, running latitudinally through the same land, approximately at right angles from and to the

strip described in the first resolution. [Tr. Vol. I, fols. 676-679.]

Actions in eminent domain were duly instituted for the condemnation of the strips of land described in the resolutions. These actions were tried at the same time, though not consolidated. [Tr. Vol. I, fol. 642.] The compensation to be paid to the owner was determined by a jury and paid into court for the owners. [Tr. Vol. I, fols. 485-487, 621-622.] Verdicts were rendered and judgments entered condemning the land described in the resolutions. [Tr. Vol. I, fols. 370, 585, 412, 485, 606, 621.] The owners of the land condemned duly appealed from the judgments. The judgments were affirmed by the District Court of Appeal of the state of California. (County of Los Angeles v. Rindge Company ... Cal. App. ..., 200 Pac. 27.) [Tr. Vol. III, fols. 4243-4295.] A hearing of the causes by the Supreme Court of California was denied by that court. [Tr. Vol. III, fols. 4295-4297.] The causes were heard on one record by the District Court of Appeal and are before this court by writ of error on one record, by stipulation. The same questions are involved in the two cases.

At the trial of the actions defendant in error first offered in evidence the two resolutions above referred to. [Tr. Vol. I, fols. 667-679.]

Thereupon it rested and plaintiffs in error moved for a nonsuit. The motion was denied.

The basis of the motion for a nonsuit was that defendant in error had failed to prove (a) that the taking is necessary to the use in question, namely, highway purposes (b) the public necessity of such proposed public utility or public improvement, (c) that such property which it is proposed shall be taken is necessary therefor, and (d) that such public utility or public improvement is planned or located in the manner which would be most compatible with the greatest public good and the least private injury. [Tr. Vol. I, fols. 681-683.]

The trial court held that the resolutions were *prima facie* evidence and the District Court of Appeal that they were conclusive evidence of such facts. The holding of the District Court of Appeal was predicated on the provisions of section 1241 of the Code of Civil Procedure of California.

That section in its pertinent parts, prior to the year 1913 read:

> "Before property can be taken, it must appear:
>
> "1. That the use to which it is to be applied is a use authorized by law;
>
> "2. That the taking is necessary to such use."

In 1913 the Legislature of California amended subdivision 2 of section 1241 to read as follows:

> "That the taking is necessary to such use; *provided,* when the legislative body of a county, city and county, or an incorporated city or town, shall, by resolution or ordinance, adopted by vote of two-thirds of all its members, have found and determined that the public interest and necessity require the acquisition, construction or completion, by such county, city and county, or incorporated city or town, of any proposed public utility, or any public improvement, and that the property described in such resolution or ordinance is necessary therefor, such resolution or ordinance shall be conclusive evidence; (a) of the public necessity of such proposed public utility or public improvement; (b) that such property is necessary therefor, and (c) that such proposed public utility or public improvement is planned or located in the manner which will be most compatible with the greatest public good, and the least private injury; *provided,* that said resolution or ordinance shall not be such conclusive evidence in the case of the taking by any county, city and county, or incorporated city or town, of property located outside of the territorial limits thereof." (Calif. Stats. 1913, p. 549.)

It is the contention of plaintiffs in error in this court that the Amendment of 1913 is unconstitutional and void for the reason that it is repugnant to the Fourteenth Amendment to the Federal Constitution.

They say:

"The record herein referred to involves the following questions:

1. Was the property sought to be condemned for a use authorized by law, and was the taking necessary to such use?

2. Was there any public necessity for the proposed highways, in view of the fact that they were located exclusively on private property?

3. Were the resolutions adopted by the Board of Supervisors of Los Angeles county conclusive evidence of the facts required to be found by section 1241 of the California Code of Civil Procedure before a citizen's property may be condemned, and is the proviso of that section constitutional?

4. Was the trial court justified in holding that the resolutions adopted by the Board of Supervisors of Los Angeles county were only *prima facie* evidence of the facts required to be found by section 1241 of California Code of Civil Procedure, and that the burden was cast upon plaintiffs in error to negative this *prima facie* showing by clear and convincing evidence?

5. Were plaintiffs in error deprived of their property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, or have they or either of them been denied the equal protection of the laws, in violation of the said amendment?"

After setting forth that the record involves the above enumerated questions, plaintiffs in error, in their argument, discuss the following:

"(1) The special defenses stricken out raised the question whether the land sought to be condemned was being taken for a public use authorized by law.

(2) The Amendment of 1913 to section 1241 of the California Code of Civil Procedure, declaring certain resolutions to be conclusive evidence of the facts stated, was and is unconstitutional and void.

(3) The holding of the trial court that the resolutions were only *prima facie* evidence of the facts recited instead of conclusive, did not cure the error, or make the amendment in question valid as to plaintiffs in error.

(4) Plaintiffs in error have been deprived of their property without due process of law and have been denied the equal protection of the laws, in violation of the Fourteenth Amendment to the Federal Constitution."

We proceed with the argument.

POINTS AND AUTHORITIES.

FIRST.

This Court Is Without Jurisdiction.

The decision of the state court was put on the ground that plaintiffs in error were accorded every right claimed by them under the Federal Constitution and for that reason were not in a position to complain of the alleged unconstitutionality of section 1241 of the California Code of Civil Procedure. It is true

that the court held section 1241 valid and constitutional but it also held that if it were conceded that section 1241 was unconstitutional, plaintiffs in error were not prejudiced because of the fact that they were accorded every right claimed by them under the Federal Constitution. [Tr. Vol. III, fols. 4243-4294.]

Plaintiffs in error claim that the Amendment of 1913 to section 1241 is unconstitutional and void. The same claim was made in the trial court and that court agreed with them and proceeded as though the amendment had never been enacted. They contend that the striking out of their special separate defenses prevented them from showing that the purpose for which their property was to be taken was not a public one. Under the allegations of the complaint, the answers and special separate defenses remaining after the striking out of the one referred to, they were afforded and took advantage of the opportunity of showing that the use was not public.

The learned District Court of Appeal said:

> "As a separate defense the defendants May K. Rindge and Rindge Company alleged that all of the property which plaintiff sought to condemn was within the boundaries of the Malibu ranch in Los Angeles county; that while the ranch was owned in severalty by May K. Rindge and the Rindge Company, it was, and had been

for more than 20 years, with the knowledge of plaintiff, operated as a single ranch under one management and control; that the westerly end of said proposed highway terminates at and upon the boundary line between Los Angeles county and Ventura county upon the Malibu ranch, which, as owned by defendants, extends into Ventura county for a distance of —— miles, all of which is managed, operated and controlled by said defendants with the lands of said ranch so located in Los Angeles county; that there is no public road of any kind or character whatever within ——miles of the Ventura county end of said ranch, and the only means of egress and ingress to the westerly terminus of said proposed road is by private trails and ways; that said proposed road or highway, if condemned, would be located wholly and solely upon that part of the Malibu ranch situated in Los Angeles county, and would end and terminate upon private property of the Rindge Company at the Ventura county line, and as constructed would give access wholly and solely to the private ranch property of defendants May K. Rindge and Rindge Company, and could not furnish any way of necessity or convenience to the general public; that the owners of said ranch have no need or desire for a public road thereon, which, if constructed, would be a constant menace and damage to their ranch property; by reason of which facts it is alleged the taking of said property for the purpose contemplated would be without necessity of any kind or right. Upon the grounds and for the reason that all of the matter so alleged as a separate defense was irrele-

vant, immaterial, surplusage, and conclusions of law, plaintiff moved to strike the same from the answer. This motion was granted, and appellants assign the ruling as error. Counsel for appellants insist the special defense so pleaded was upon the theory that an isolated road within the boundaries of what is practically one property and not desired by the owners thereof, and which could afford no real service to any part of the public as a road, could not possibly be a public necessity for which condemnation would lie. While this contention is fully answered by the fact that the resolution was conclusive evidence of the taking being necessary, nevertheless, conceding such theory warranted by the alleged facts, it appears that every material issue tendered by the so-called separate defense was not only raised by the complaint and the answers thereto, but that in the trial thereof defendant, without objection or restriction, was accorded every opportunity, of which it availed itself, in offering evidence touching every matter contained in the pleading so stricken out by order of the court. There was no error in the ruling, but, conceding as much, it is impossible to perceive how defendants, under the circumstances, could have suffered any prejudice by reason thereof." (200 Pac. 27, at p. 31.)

After the introduction in evidence of the resolutions of the Board of Supervisors which the trial court held were *prima facie* evidence of the facts enumerated in the *proviso,* plaintiffs in error introduced testimony for the pur-

pose of overcoming the *prima facie* effect of the resolutions. Defendant in error then introduced testimony tending to show the necessity for the highway, the necessity for the particular land sought to be taken and that it was located in the manner most compatible with the greatest public good and the least private injury.

The District Court of Appeal said:

> "However this may be, and contrary to the views herein expressed, the trial court agreed with defendants' contention that the resolution was not conclusive evidence of the facts so found, but did admit it as a sufficient *prima facie* showing of such facts, and upon this theory denied the motion for nonsuit. Thereupon, and after the denial of their motion, defendants were given the widest latitude in offering a mass of evidence for the purpose of showing there was no necessity for the proposed highway, followed by plaintiff, which in rebuttal, introduced a vast deal of evidence, likewise touching the question of necessity for the improvement. Indeed, it appears from the voluminous record that no restrictions whatsoever were imposed upon either party in the introduction of evidence touching the question. Under these circumstances, and assuming the court erred in accepting the resolution even as *prima facie* evidence, nevertheless we cannot perceive how defendants were prejudiced by the circumstances, since the testimony which, according to appellants' theory, should have been produced during

plaintiff's presentation of its case in chief was later in the trial supplied. The error is predicated solely upon the order in which the evidence touching the question was admitted.

"'It is well settled that an order denying a motion for a nonsuit will not be disturbed, although the evidence at the close of plaintiff's case was so weak that it might properly have been granted, if upon the trial the defect is overcome by evidence subsequently introduced.' Peters v. Southern Pacific Co., 160 Cal. 48, 116 Pac. 400; Lowe v. San Francisco, etc., Ry. Co., 154 Cal. 573, 98 Pac. 678.

"'Since both parties were permitted, after the ruling upon the motion, to introduce evidence, without restriction, touching the question of necessity, defendants could in no event have been prejudiced by the ruling.'" (P. 31.)

The rule applicable here is found in *Baltimore Traction Co. v. B. Belt R. Co.* (1893), 151 U. S. 137, 14 S. Ct. 294, 38 L. Ed. 102, in which it is held that where a statute providing for condemnation proceedings has been construed by the state courts as requiring notice no federal question with respect to due process of law can be based upon the objection that such statute allows condemnation without notice.

The statute in question was construed by the trial court as unconstitutional and void and it was held that the issues of necessity for the highway, necessity for the particular land con-

demned for the highway and the proper location thereof were before the trial court for hearing and determination after notice to plaintiffs in error. There can, therefore, be no question with respect to due process of law based upon the objection that the statute allows the determination of these matters without notice.

The decision of the federal questions was rendered unnecessary by the view taken of the case by the District Court of Appeal as quoted above. If the decision of a federal question by a state court is rendered unnecessary by the view the court properly takes of the case within the scope of the pleadings, the judgment is not open for review in the United States Supreme Court. (*Chapman v. Goodnow* (1887), 123 U. S. 540, 8 S. Ct. 211, 31 L. Ed. 235; *Wells v. Crane* (1893), 150 U. S. 84, 14 S. Ct. 22, 37 L. Ed. 1007.)

Under these circumstances this court will affirm the judgment. (*Murdock v. City of Memphis* (1874), 87 U. S. 590, 20 Wall 591, 22 L. Ed. 429.)

Where a state decision of an alleged federal question was not necessary to its judgment, but the court also puts its decision upon another ground not repugnant to the Federal Constitution, the United States Supreme Court has no jurisdiction. (*Brooks v. Missouri* (1887), 124 U. S. 394, 31 L. Ed. 454.)

This court will not entertain jurisdiction of state judgments where, beside the federal question decided by the state court, there is another and distinct ground on which the judgment can be sustained. (*Kennebeck & P. R. Co. v. Portland & K. R. Co.* (1871), 81 U. S. 14 Wall. 23, 20 L. Ed. 850; *Rector v. Ashley* (1867), 73 U. S. 6 Wall. 142, 18 L. Ed. 733; *Gibson v. Choteau* (1868), 75 U. S. 8 Wall. 314, 19 L. Ed. 317; *Klinger v. Missouri* (1871), 80 U. S. 13 Wall. 257, 20 L. Ed. 635; *Detroit City R. Co. v. Guthard* (1884), 114 U. S. 133, 29 L. Ed. 118; *New York etc. Co. v. New York* (1901), 186 U. S. 269, 22 S. Ct. 916, 46 L. Ed. 1158; *Hale v. Lewis* (1900), 181 U. S. 473, 21 S. Ct. 677, 45 L. Ed. 959; *Mobile etc. Co. v. Miss* (1907), 210 U. S. 187, 28 S. Ct. 650, 52 L. Ed. 1016; *Gaar etc. Co. v. Shannon* (1911), 223 U. S. 468, 32 S. Ct. 236, 56 L. Ed. 510.)

And this is true even though the Supreme Court of the United States may think the position of the state court is an unsound one. (*Klinger v. Missouri* (1871), 80 U. S. 13 Wall. 257, 20 L. Ed. 635; *DeSaussure v. Gaillard* (1887), 127 U. S. 216, 8 S. Ct. 1053, 32 L. Ed. 125.)

It must appear that the case could not have been decided without deciding the federal question. (*Brown v. Atwell* (1875), 92 U. S. 327,

23 L. Ed. 511; *DeSaussure v. Gaillerd* (1887), 127 U. S. 216, 8 S. Ct. 1053, 32 L. Ed. 125.)

For this reason it is respectfully submitted that this court is without jurisdiction and that the judgment should be affirmed on this ground. However, out of an overabundance of precaution we will discuss the alleged federal constitutional questions raised by plaintiffs in error.

SECOND.

California Code of Civil Procedure, Section 1241, as Amended in 1913, Is Not Repugnant to the Due Process of Law Clause of the Federal Constitution.

The right of eminent domain is an attribute of sovereignty. It is inherent in the state and exists independent of the Constitution. All private property is held subject to this right in the state. The nature of the right contemplates that private property is to be taken for public use. Conversely, private property may not be taken by the state unless the purpose for which it is taken is a public one. Other than this limitation inwrought in the right itself, the only restriction on the power of the state is that to be found in the Constitution of the United States and of California,—that compensation shall be paid or tendered to the own-

er. (Constitution United States, Fourteenth Amendment; California Constitution, Art. I, Sec. 14.) In all other respects the state, acting through the Legislature, is unfettered in exercising this sovereign power.

When the state or one of its agencies exercises this sovereign right two separate functions of government are set in action. First, the legislative function determining the necessity for the exercise of the power, the necessity for taking the particular property, the quantity to be taken and the location of the public improvement. Second, the judicial function, determining whether the purpose for which the property is to be taken is public, and the compensation to be paid the property owner.

The legislative function is not subject to any limitation or restriction of the Federal Constitution. The Legislature may, by direct statutory enactment, take any particular property or it may delegate that power to a subordinate tribunal to be exercised in any manner prescribed by the Legislature.

The judicial function is subject to the due process of law clause of the Fourteenth Amendment. Property may not be taken for a private use and it may not be taken without compensating the owner.

Here we are concerned with the legislative function only. The *proviso* inserted in section

1241 of the California Code of Civil Procedure by the Amendment of 1913 concerns only (a) the necessity for the proposed improvement (b) the necessity of the particular property therefor, and (c) the location of the proposed improvement. It is the determination of these questions only which is made conclusive on the property owner without notice or hearing. He is not entitled to notice or hearing on the determination of these questions.

The judicial function remains to be exercised upon notice and hearing in the judicial proceeding. By subdivision 1 of section 1241, to which the *proviso* does not relate, the court must determine whether the taking is for a public use. Compensation is determined as provided elsewhere. Constitutionally this is all the property owner is entitled to—a judicial determination of whether the use is public, and compensation.

The Fourteenth Amendment to the Federal Constitution does not require that a property owner shall be given notice of or accorded a hearing on the consideration or determination of the questions of (a) the public necessity of the proposed public improvement (b) the necessity of the particular property for such public improvement, and (c) the location of such public improvement.

We approach a consideration of the authorities among which there is no conflict supporting the argument and statements set forth above. These authorities hold that a Legislature may determine the matters enumerated in the *proviso* to section 1241 by direct legislative enactment or through a subordinate tribunal in any manner it may prescribe, without notice or hearing given the property owner, without violating the Fourteenth Amendment.

In the late case of *Bragg v. Weaver* (1919), 251 U. S. 57, 40 S. Ct. 62, 64 L. Ed. 135, the facts are stated in the opinion as follows:

> "By this suit the owner of land adjoining a public road in Virginia seeks an injunction against the taking of earth from his land to be used in repairing the road. The taking is from the most convenient and nearest place, where it will be attended by the least expense, and has the express sanction of a statute of the state. Pollard's Code 1904, Sec. 944a, clauses 21 and 22. Whether the statute denies to the owner the due process of law guaranteed by the 14th Amendment is the federal question in the case. It was duly presented in the state court. and, while no opinion was delivered, the record makes it plain that, by the judgment rendered, the court resolved the question in favor of the validity of the statute.
>
> "It is conceded that the taking is under the direction of public officers and is for a public use; also that adequate provision is made for the payment of such compensation as may be awarded. Hence no dis-

cussion of these matters is required. The objection urged against the statute is that it makes no provision for affording the owner an opportunity to be heard respecting the necessity or expediency of the taking or the compensation to be paid." (P. 58.)

The court said:

"Where the intended use is public, the necessity and expediency of the taking may be determined by such agency and in such mode as the state may designate. They are legislative questions, no matter who may be charged with their decision, and a hearing thereon is not essential to due process in the sense of the 14th Amendment. Mississippi & R. River Boom Co. v. Patterson, 98 U. S. 403, 406, 25 L. Ed. 206, 207; A. Backus, Jr., & Sons v. Fort Street Union Depot Co., 169 U. S. 557-568, 42 L. Ed. 853, 858, 18 Sup. Ct. Rep. 445; Adirondack R. Co. v. New York, 176 U. S. 335, 349, 44 L. Ed. 492, 499, 20 Sup. Ct. Rep. 460; Sears v. Akron, 246 U. S. 242, 251, 62 L. Ed. 688, 698, 38 Sup. Ct. Rep. 245." (P. 58.)

The court states the facts in *Sears v. Akron* (1917), 246 U. S. 242, 38 S. Ct. 245, 62 L. Ed. 688, as follows:

"Akron, Ohio, lies on Little Cuyahoga River a short distance above its confluence with the Big Cuyahoga. In May, 1911, the legislature of Ohio granted to the city, by special act, 'the right to divert and use forever' for the purposes of its water supply 'the Tuscarawas River, the Big Cuya-

hoga and Little Cuyahoga Rivers and the tributaries thereto, now wholly or partly owned or controlled by the state.' The city already possessed, under the General Laws of Ohio, power to appropriate for this purpose, by condemnation proceedings, the property of any private corporation. Acting specifically in exercise of the power conferred by the special act and of every other power thereunto enabling, the city, by resolution of its council, passed May 27, 1912, declared its intention to appropriate all the waters, above a point fixed, of the Cuyahoga River and tributaries; and by an ordinance passed August 26, 1912, it appropriated the same, directed its solicitor to apply to the courts to assess the compensation to be paid, and provided for the payment of 'the costs and expenses of said appropriation' out of an issue of bonds theretofore authorized. The city then constructed a dam and reservoir at the place specified and announced its intention of diverting the water before or by August 1, 1915." (Pp. 243-5.)

This suit was in the federal District Court for an injunction restraining the construction of the dam and the diversion of the water.

The court held:

"Fourth: Plaintiff contends that the ordinance is void because the general statute which authorized the appropriation violates both article 1, section 10, of the Federal Constitution, and the 14th Amendment, in that it authorizes the municipality to determine the necessity for the taking of private property without the owners hav-

ing an opportunity to be heard as to such necessity; that in fact no necessity existed for any taking which would interfere with the company's project; since the city might have taken water from the Little Cuyahoga or the Tuscarawas Rivers; and furthermore, that it has taken ten times as much water as it can legitimately use. It is well settled that while the question whether the purpose of a taking is a public one is judicial (Hairston v. Danville & W. R. Co., 208 U. S. 598, 52 L. Ed. 637, 28 Sup. Ct. Rep, 331, 13 Ann. Cas. 1008), the necessity and the proper extent of a taking is a legislative question (Shoemaker v. United States, 147 U. S. 282, 298, 37 L. Ed. 170, 184, 13 Sup. Ct. Rep. 361; United States v. Gettysburg Electric R. Co., 160 U. S. 668, 685, 40 L. Ed. 576, 582, 16 Sup. Ct. Rep. 427; United States v. Chandler-Dunbar Water Power Co., 229 U. S. 53, 65, 57 L. Ed. 1003, 1076, 33 Sup. Ct. Rep. 667). The legislature may refer such issues, if controverted, to the court for decision (Pittsburg, C. C. & St. L. R. Co. v. Greenville, 69 Ohio St. 487, 69 N. E. 976)." (P. 251.)

In *Secombe v. R. R. Co.* (1874), 90 U. S. 108, 23 Wall. 108, 23 L. Ed. 67, this court declared:

"It is no longer an open question in this country that the mode of exercising the right of eminent domain, in the absence of any provision in the organic law prescribing a contrary course, is within the discretion of the Legislature. There is no limitation upon the power of the Legislature in this respect, if the purpose be a public

one, and just compensation be paid or tendered to the owner for the property taken." (Pp. 117-118.)

Thus there is no limitation in the Constitution of the United States upon the power of the Legislature of California to enact the *proviso* found in section 1241 of the Code of Civil Procedure, as the only restraint upon the power of the Legislature was that requiring that the purpose be a public one and that compensation be made.

The above case is followed by the leading case of *Boom v. Patterson* (1878), 98 U. S. 403, 25 L. Ed. 206, where the question is more fully discussed. This court, in part, said:

> "The right of eminent domain, that is, the right to take private property for public uses, appertains to every independent government. It requires no constitutional recognition; it is an attribute of sovereignty. The clause found in the Constitutions of the several states providing for just compensation for property taken is a mere limitation upon the exercise of the right. *When the use is public, the necessity or expediency of appropriating any particular property is not a subject of judicial cognizance. The property may be appropriated by an act of the Legislature, or the power of appropriating it may be delegated to private corporations, to be exercised by them in the execution of works in which the public is interested.* * * *

> The point in issue was the compensation to be made to the owner of the land; in other words, the value of the property taken. No other question was open to contestation in the District Court. *Turner v. Halloran,* 11 Minn. 253. The case would have been in no essential particular different had the state authorized the company by statute to appropriate the particular property in question, and the owners to bring suit against the company in the courts of law for its value." (Italics ours.) (Pp. 406, 407.)

If the purpose be public, the taking may be outright, provided reasonable, certain and adequate provision is made at the time of appropriation to ascertain and secure the compensation to be made to the owner. (*Madisonville Traction Co. v. St. Bernard Min. Co.* (1904), 196 U. S. 239, 49 L. Ed. 462.) The quantity which should be taken is a legislative question. (*U. S. v. Gettysburg Electric R. Co.* (1895), 160 U. S. 668, 680, 40 L. Ed. 576.)

Lewis, in his work on Eminent Domain, 3d edition, Vol. 1, section 255, says:

> "The necessity, expediency or propriety of exercising the power of eminent domain, and the extent and manner of its exercise, are questions of general public policy and belong to the legislative department of the government."

The same learned author, 3d edition, Vol. II, section 453, says:

> "How much may be taken. It has been held to be within the province of the Legislature, in the absence of constitutional provisions on the subject, to determine the quantity, as well as the estate, which may be taken for public use."

Cooley, in his work on Constitutional Limitations, 7th edition, page 760, says:

> "Private property can only be taken pursuant to law; but a legislative act declaring the necessity, being the customary mode in which that fact is determined, must be held to be for this purpose 'the law of the land,' and no further finding of adjudication can be essential, unless the Constitution of the state has expressly required it."

Again, at page 777, this learned author says:

> "The authority to determine in any case whether it is needful to permit the exercise of this power must rest with the state itself; and the question is always one of strictly political character, not requiring any hearing upon the facts or any judicial determination. Nevertheless, when a work or improvement of local importance only is contemplated, the need of which must be determined upon a view of the facts which the people of the vicinity may be supposed best to understand, the question of necessity is generally referred to some local tribunal, and it may even be submitted to a jury to decide upon evidence. But parties interested have no constitutional

right to be heard upon the question, unless the State Constitution clearly and expressly recognizes and provides for it."

See also:

Hays v. Seattle (1919), 251 U. S. 233, 40 S. Ct. 125, 64 L. Ed. 243;

O'Neil v. Leamer (1915), 239 U. S. 244, 36 S. Ct. 54, 60 L. Ed. 249;

U. S. v. Chandler-Dunbar Water Power Co. (1912), 229 U. S. 53, 65, 33 S. Ct. 667, 57 L. Ed. 1063;

Appleby v. Buffalo (1910), 221 U. S. 524, 31 S. Ct. 699, 55 L. Ed. 838;

Adirondack R. Co. v. N. Y. (1900), 176 U. S. 335, 349, 20 S. Ct. 460, 44 L. Ed. 492;

Backus v. Fort Street Union Depot Co. (1898), 169 U. S. 557, 568, 18 S. Ct. 445, 42 L. Ed. 853;

Chicago etc. Co. v. Chicago (1896), 166 U. S. 226, 17 S. Ct. 581, 41 L. Ed. 979;

Monongahela Nav. Co. v. U. S. (1892), 148 U. S. 312, 327, 13 S. Ct. 622, 37 L. Ed. 463;

Shoemaker v. U. S. (1892), 147 U. S. 282, 298, 13 S. Ct. 361, 37 L. Ed. 170;

Pearson v. Yewdall (1877), 95 U. S. 294, 24 L. Ed. 436;

In re Condemnations, etc. (1920), 266 Fed. 105;

Cuyahoga River Power Co. v. City of Akron (1913), 210 Fed. 524;

Kaw etc. District v. Metropolitan Water Co. (1911), 186 Fed. 315, 319, 108 C. C. A. 393;

Chappell v. U. S. (1897), 81 Fed. 765, 26 C. C. A. 600;

In re Rugheimer (1888), 36 Fed. 371.

The books are replete with cases supporting the constitutionality of statutes by which the Legislature itself, or a subordinate tribunal conclusively determine the matters enumerated in section 1241 of the California Code of Civil Procedure. The following from the Appellate Courts of the various states are directly in point:

Kramer v. Cleveland and Pitts. R. R. Co. (1855), 5 Ohio St. 140, 146;

People v. Smith (1860), 21 N. Y. 595, 597;

Water Commissioners v. Johnson (1912), 86 Conn. 151, 84 Atl. 727;

County Court of St. Louis Co. v. Griswold (1874), 58 Mo. 175;

Water Works Co. v. Burkhart (1872), 41 Ind. 364;

Aldridge v. R. R. Co. (1832), 2 Stew. & Port. (Ala.), 199, 23 Am. Dec. 307;

Varick v. Smith (1835), 5 Paige Ch. (N. Y.) 137, 28 Am. Dec. 417;

Matter of Fowler (1873), 53 N. Y. 60, 62;

Zimmerman v. Canfield (1885), 42 Ohio St. 463;

Matter of Union Ferry Co. (1885), 98 N. Y. 140, 153;

Tait's Exec. v. Central Lunatic Asylum (1888), 84 Va. 271, 4 S. E. 697;

Sholl v. German Coal Co. (1887), 118 Ill. 427, 10 N. E. 199;

Moore v. Sanford (1890), 151 Mass. 285, 24 N. E. 323, 7 L. R. A. 151;

Fairchild v. City of St. Paul (1891), 46 Minn. 540, 49 N. W. 325;

Barrett v. Kemp (1894), 91 Ia. 296, 59 N. W. 76;

Paxton etc. Co. v. Farmers etc. Co. (1895), 45 Neb. 884, 64 N. W. 343, 50 Am. St. Rep. 585, 592;

Richland School Tp. v. Overmyer (1905), 164 Ind. 382, 73 N. E. 811;

Hayford v. Municipal Officers of Bangor (1907), 102 Me. 340, 66 Atl. 731, 11 L. R. A. (N. S.) 940;

So. Park Commissioners v. Montgomery Ward & Co. (1910), 248 Ill. 299, 93 N. E. 910, 21 Ann. Cas. 127;

Westport Stone Co. v. Thomas (1911), 175 Ind. 319, 94 N. E. 406, 35 L. R. A. (N. S.) 646;

Bd. Water Commissioners v. Manchester (1915), 89 Conn. 671, 96 Atl. 182, affirmed in *Manchester v. Board of Water Commissioners* (1915), 241 U. S. 649, 36 S. Ct. 552;

Dist. of Columbia v. Washington S. & O. (1915), 43 App. Cas. 433;

Tracy v. Elizabethtown (1882), 80 Ky. 259, 265;

Smeaton v. Martin (1883), 57 Wis. 364, 371, 15 N. W. 403;

Boston v. Talbot (1910), 206 Mass. 82, 91 N. E. 1014;

Ford v. Chicago (1861), 14 Wis. 663;

Iron Railroad Co. v. City of Irontown (1869), 19 Ohio St. 299, 304;

Wisconsin Water Company v. Winans (1893), 85 Wis. 26, 54 N. W. 1003, 39 Am. St. Rep. 813;

City of Philadelphia v. Ward (1896), 174 Pa. St. 45, 34 Atl. 458;

Chicago etc. Co. v. Mason (1909), 23 S. Dak. 564;

See note Ann. Cas. 1913a, p. 1256.

The constitutional principles governing the exercise of the right of eminent domain are

learnedly and elaborately stated in *People v. Smith* (1860), 21 N. Y. 595, 597, where the court says:

> "The question then is, whether the state, in the exercise of the power to appropriate the property of individuals to a public use, where the duty of judging of the expediency of making the appropriation, in a class of cases, is committed to public officers, is obliged to afford to the owners of the property an opportunity to be heard before those officers when they sit for the purpose of making the determination. I do not speak now of the process for arriving at the amount of compensation to be paid to the owners, but of the determination whether under the circumstances of a particular case the property required for the purpose shall be taken or not; and I am of opinion that the state is not under any obligation to make provision for a judicial contest upon that question. The only part of the Constitution which refers to the subject is that which forbids private property to be taken for public use without compensation, and that which prescribes the manner in which the compensation shall be ascertained. It is not pretended that the statute under consideration violates either of these provisions. There is therefore no constitutional injunction on the point under consideration. *The necessity for appropriating private property for the use of the public or of the government is not a judicial question. The power resides in the Legislature. It may be exercised by means of a statute which shall at once designate the property to be appropriated*

and the purpose of the appropriation; or it may be delegated to public officers, or, as it has been repeatedly held, to private corporations established to carry on enterprises in which the public are interested. There is no restraint upon the power, except that requiring compensation to be made. And where the power is committed to public officers, it is a subject of legislative discretion to determine what prudential regulations shall be established to secure a discreet and judicious exercise of the authority.

"The constitutional provision securing a trial by jury in certain cases, and that which declares that no citizen shall be deprived of his property without due process of law, have no application to the case. The jury trial can only be claimed as a constitutional right where the subject is judicial in its character. The exercise of the right of eminent domain stands on the same ground with the power of taxation. Both are emanations of the law-making power. They are the attributes of political sovereignty, for the exercise of which the Legislature is under no necessity to address itself to the courts. In imposing a tax or in appropriating the property of a citizen, or a class of citizens, for a public purpose, with a proper provision for compensation, the legislative act is itself due process of law; though it would not be if it should undertake to appropriate the property of one citizen for the use of another, or to confiscate the property of one person or a class of persons, or a particular description of property upon some view of public policy, where it could not

be said to be taken for a public use. (*The People v. The Mayor of Brooklyn*, 4 Comst. 419; *Taylor v. Porter*, 4 Hill 140; *Wynehamer v. The People*, 3 Kern. 378.)

"It follows from these views that it is not necessary for the Legislature in the exercise of the right of eminent domain, either directly, or indirectly through public officers or agents, to invest the proceeding with the forms or substance of judicial process. It may allow the owner to intervene and participate in the discussion before the officer or board to whom the power of determining whether the appropriation shall be made in a particular case, or it may provide that the officers shall act upon their own views of propriety and duty without the aid of a forensic contest. The appropriation of the property is an act of public administration, and the form and manner of its performance is such as the Legislature shall in its discretion prescribe." (Italics ours.) (Pp. 597-599.)

The only cases in which it has been held that the property owner may question the necessity of taking any or all of the property sought to be taken are cases where the State Constitution required the question to be submitted to a court or jury or are cases where the Legislature has authorized only the taking of such property as is necessary. It has never been held that the property owner may question the necessity of taking any or all of the property sought to be condemned in a case where the

Legislature itself has determined the necessity or has delegated that power to an inferior tribunal. An examination of those decisions from which it might appear upon cursory reading that it was held that the question of necessity was a judicial one will disclose that the question in reality considered and discussed was whether or not the use for which the property was sought to be taken was in fact a public one, or will disclose that the Legislature had expressly made the determination of the question itself a judicial one to be determined by the court.

The fear of counsel, expressed several times in their brief, in substance that the effect of the *proviso* of section 1241 of the California Code of Civil Procedure is to substitute the arbitrary and capricious action of a board of supervisors for a judicial investigation, should at least be somewhat allayed by the language of this court in *Kentucky R. R. Tax Cases* (1885), 115 U. S. 321, 6 S. Ct. 57, 29 L. Ed. 414, where it is said:

> "But the same suppositions may be indulged in, in opposition to all contrary presumptions, with reference to the final action of any tribunal appointed to determine the matter, however carefully constituted, and however carefully guarded in its procedure, and whether judicial or administrative. Such possibilities are but the necessary imperfections of all human institu-

> tions, and do not admit of remedy; at least no revisory power to prevent or redress them enters into the judicial system, for, by the supposition, its administration is itself subject to the same imperfections." (P. 335.)

THE AMENDMENT OF 1918 TO THE CALIFORNIA CONSTITUTION.

Counsel quote an amendment to the California Constitution adopted by a vote of the people November 5, 1918, and argue therefrom that under the California Constitution the determination of the matters enumerated in the *proviso* to section 1241 is a judicial question.

We are at a loss to understand what this amendment has to do with this case in this court, particularly in view of the fact that it was adopted after this case had been on trial for over a month. [Tr. Vol. I, fol. 640 and Vol. III, fol. 3259.]

Whether the statute in question violates any provision of the Constitution of California does not concern this court. The state court's construction of its own Constitution is accepted by this court. Nothing appears in the opinion of the District Court of Appeal herein indicating that that court considered section 1241 repugnant to the State Constitution. Further, as the constitutional provision became effective after the resolutions had served their purpose

as evidence, it could have no bearing on the value of such resolutions as evidence. Upon a reading of the amendment it is at once apparent that the words "an adjudication that there is no necessity for taking the property" refer to those cases in which, under section 1241, there may be an adjudication that there is no necessity for taking the property. Under section 1241, if the legislative body of the county, city and county, or incorporated city or town does not determine the necessity for taking the property by a two-thirds vote, such necessity must be determined by the court. Also, when the property to be taken lies outside of the territorial limits of the public corporation, or when a drainage, irrigation, levee or reclamation district, mentioned in the Constitution, seeks to condemn, the necessity for the taking must be determined by the court. It is clear that it is to a taking in these cases that the provision of the Constitution refers.

However, this discussion is of no interest to this court for, as already pointed out, the District Court of Appeal in this case held that under the Constiution and laws of California a determination of the matters enumerated in the *proviso* of section 1241 is a legislative function. This court, as it has repeatedly held, will accept the state court's construction of the State Constitution and statute so long as there is no

conflict with the Federal Constitution. That there is no such conflict and that a determination of the matters enumerated in the *proviso* by the Legislature or by a subordinate tribunal does not violate the Federal Constitution is amply sustained by the authorities already referred to. (*Bragg v. Weaver* (1919), 251 U. S. 57, 40 S. Ct. 62, 64 L. Ed. 135.)

The Holding That the Resolutions Were Prima Facie Evidence.

Neither is there any merit in the argument of counsel that the ruling of the trial court holding the resolutions of the Board of Supervisors *prima facie* evidence of the necessity deprived their clients of their property without due process. That a statute or decision declaring certain facts *prima facie* evidence of other facts does not violate the Federal Constitution is apparent from the many decisions referred to in the brief of plaintiffs in error. (Brief, Plaintiffs in Error, pp. 42-65.)

The Legislative Body Does Not Determine That the Use Is Public.

Throughout the brief of plaintiffs in error the assertion is made that under the *proviso* the legislative body conclusively determines that property is taken for a public use. Counsel are in error. A cursory reading of the section will

convince the court that subdivision 1 provides for the determination by the court of whether the use is public and that the *proviso* does not in any manner concern itself with this question. Assuming, as they do, that the *proviso* authorizes the conclusive determination by the legislative body, of whether the use is public, counsel erect a structure of argument apparently convincing to themselves that the *proviso* operates to deprive their clients of due process of law. The fact that the *proviso* does not authorize the legislative body to determine conclusively, or at all, the question of public use makes manifest the falsity of the argument.

The Holding That the Determination of Necessity Is a Legislative Function.

Counsel argue that under the California law prior to this case the decision of the matters enumerated in the *proviso* of section 1241 was a judicial function; that the court in this case held it to be a legislative one; that therefore, by some mental complex, unexplained and unexplainable, plaintiffs in error are deprived of their property without due process of law. That the California courts did not for the first time in this case hold that the decision of these questions is a legislative function is apparent from *Wulzen v. Board of Supervisors* (1894), 101 Cal. 15, 35 Pac. 353, 4 Am. St. R. 17,

quoted from by the District Court of Appeal. [Tr. Vol. III, fols. 4274-4275.] However this may be, the only matter of importance to this court in this behalf is that it was held to be a legislative function in this case, for it is the settled rule of this court in cases of this kind to accept the construction placed by the courts of the state upon their own Constitution and statutes. (*Backus v. Fort Street Union Depot Co.* (1898), 169 U. S. 557, 18 S. Ct. 445, 42 L. Ed. 853.) The language of the court in the Backus case is peculiarly applicable to counsel's contention that the Appellate Court in this case held that the decision of the matters enumerated in the *proviso* was a legislative function, contrary to the previous decisions of the California courts, and that thereby plaintiffs in error were denied due process of law. The court declared:

> "His contention, however, is that the true construction of the Constitution and laws of the state, as settled by repeated decisions of its Supreme Court, was wholly disregarded in this case, and that by reason thereof the respondents were denied that equal protection of the laws which is guaranteed by the 14th Amendment to the Federal Constitution. * * *
>
> "But it is insisted that those proceedings were not so warranted; that the settled, uniform, and unreversed construction thereof by the Supreme Court of the state

theretofore forbade them, and hence there was a discrimination against the respondents, and they were denied that equal protection of the laws which the Federal Constitution guarantees. Thus, for instance, it is insisted that the previous rulings of the courts, both trial and supreme, had been to the effect that a jury called under these condemnation statutes was a jury of inquest and not a trial jury, whereas in this case the ruling was practically to the contrary, and the respondents were compelled to submit their rights to a trial jury subject to the control of the presiding judge, as in ordinary common-law cases. We deem it unnecessary to review the many authorities from the Supreme Court of Michigan cited by counsel, or determine whether the ruling in this case as to the methods of procedure and the true construction of the statute is or is not in harmony with prior decisions of that court. Accepting the contention of counsel, that in this case the Supreme Court of the state has put a different construction on the state statutes from that therefore given, and has sustained modes of procedure different from those which had previously obtained, still it does not follow that this court has a right to interfere and say that the present ruling is erroneous and the prior construction correct, or that the change of construction works a denial of any fundamental rights. There is no vested right in a mode of procedure. Each succeeding Legislature may establish a different one, providing only that in each is preserved the essential elements of protection. The fact that one construction has been placed upon a statute by the highest court of the

state does not make that construction beyond change. Suppose it were true, in the fullest sense of counsel's contention, that for a series of years the courts had ruled that the jury in condemnation cases was a jury of inquest, or in the nature of a sheriff's jury—one determining for itself all matters of law and fact, and that in this case, for the first time, they held otherwise, and that such jury was a common-law jury, subject to be controlled by the presiding judge, whose duty it was to determine all questions of law, and still, whatever might be thought of the propriety of such a change of construction, there is in it nothing to justify this court in reversing the judgment of the state court and denying the correctness or validity of this last ruling. We fail to see why the presence of the judge with this jury, his assumption of power to control its proceedings, his instructions to it on questions of law, necessarily vitiated the proceedings. Grant that such a course had never been taken before; grant that it had never been held to be a proper proceeding; grant that it was unexpected by counsel,—and yet if the judge's rulings and instructions were in themselves correct, and the propriety of his presence and control be held by the Supreme Court of the state warranted by the statutes, we do not perceive that any right possessed under the Constitution of the United States has been violated." (Pp. 566, 569-571.)

The only conclusion that can be drawn from the foregoing is that section 1241 of the California Code of Civil Procedure, as amended, is valid and constitutional and applicable to the

case at bar, wherein the property owners were not accorded any notice or hearing by the Board of Supervisors on the determination of the matters enumerated in the proviso of that section.

THIRD.

Plaintiffs in Error Were Not Denied the Equal Protection of the Law.

It is argued that "the different treatment accorded to the four classes described in said section 1241, namely: When the resolution is adopted by a two-thirds vote, and when not; and when the land sought to be condemned is within the territorial limits of the political subdivision seeking to condemn, and when not" denies plaintiffs in error the equal protection of the law. (Brief, Plaintiffs in Error, p. 66.)

THE POWER EXERCISED IN ENACTING THIS STATUTE IS NOT CONTROLLED BY THE FOURTEENTH AMENDMENT.

The obvious answer to this contention of plaintiffs in error is that the property owner has no interest or right whatever in how, or in what manner the necessity for the improvement, the land necessary therefor, or its location are determined. If the Legislature may designate by statute the property to be appropriated or may delegate that power to a subordinate tri-

bunal, as it has been repeatedly held it may do, without notice or hearing to the land owner, the property owner is not denied the equal protection of the law if his property is selected in a manner different from that by which his neighbor's is selected. (*Bragg v. Weaver* (1919), 251 U. S. 57, 40 S. Ct. 62, 64 L. Ed. 135; *Secombe v. R. R. Co.* (1874), 90 U. S. 108, 117, 23 Wall. 108, 23 L. Ed. 67; *Boom v. Patterson* (1878), 98 U. S. 403, 25 L. Ed. 206.) He is denied nothing. On the contrary, he is given privileges he does not otherwise have, if the Legislature says, as it has done in California, the necessity for taking property must be determined by two-thirds vote of the legislative body seeking to condemn. The power to select necessarily includes the lesser power of determining the mode of selection.

There is no limitation on the power of the Legislature as to the mode of exercising the right of eminent domain if the purpose be a public one and just compensation be paid or tendered to the owner. (*Secombe v. Milwaukee Etc. R. Co.* (1874), 90 U. S. 108, 117, 23 Wall. 108, 23 L. Ed. 67.)

Mr. Cooley, in his work on Constitutional Limitations, 7th Ed., p. 555, says:

> "The Legislature may therefore prescribe or authorize different laws of police, *allow the right of eminent domain to be exercised*

in different cases and through different agencies, and prescribe peculiar restrictions upon taxation in each distinct municipality, provided the state Constitution does not forbid. These discriminations are made constantly; and the fact that the laws are of local or special operation only is not supposed to render them obnoxious in principle." (Italics ours.)

And at page 777 Mr. Cooley says:

"The authority to determine in any case whether it is needful to permit the exercise of this power must rest with the state itself; and the question is always one of strictly political character, not requiring any hearing upon the facts or any judicial determination. Nevertheless, when a work or improvement of local importance only is contemplated, the need of which must be determined upon a view of the facts which the people of the vicinity may be supposed best to understand, the question of necessity is generally referred to some local tribunal, and it may even be submitted to a jury to decide upon evidence. But parties interested have no constitutional right to be heard upon the question, unless the state Constitution clearly and expressly recognizes and provides for it. On general principles, the final decision rests with the legislative department of the state; and if the question is referred to any tribunal for trial, the reference and the opportunity for being heard are matters of favor and not of right. The state is not under any obligation to make provision for a judicial contest upon that question. And where the case is such that it is proper to delegate to

individuals or to a corporation (a) the power to appropriate property, it is also competent to delegate the authority to decide upon the necessity for the taking."

The conclusive reply to this contention of plaintiffs in error is set forth in *Southern R. Co. v. Memphis* (1912), 126 Tenn. 267, 148 S. W. 662, Ann. Cas. 1913 E. 153, 41 L. R. A. (N. S.) 828, in the following statement:

"But all other incidents of the taking are political questions, for the determination of the sovereign, and not judicial questions, for the determination of the courts. Selecting the property to be taken, as contradistinguished from similar property in the same locality, determining its suitableness for the use to which it is proposed to put it, as well as deciding the quantity required, are all political questions, which inhere in and constitute the chief value of the power to take. This power would be a vain and empty thing, if the owner could contest the advisability of taking his property rather than his neighbor's, or if he could interpose as a defense to the taking that other property could be found which would suit the public purposes better, or that he, the owner, was of opinion and could prove that the public needed more or less than the quantity proposed to be taken. The power to take would be of small value, if the thing to be taken, in its quantity, quality, and locality, could be determined by another and adverse interest. The authorities seem to be in harmony, some of which are: Anderson v. Turbeville, *supra;* Shoemaker v. United States, 147 U. S. 282, 13 S. Ct.

361, 37 U. S. (L. ed.) 170; Boom Co. v. Patterson, 98 U. S. 406, 25 U. S. (L. ed.) 206; United States v. Gettysburg Electric Ry. Co., 160 U. S. 668, 16 S. Ct. 427, 40 U. S. (L. ed.) 576; Kohl v. United States, 91 U. S. 367, 23 U. S. (L. ed.) 449; United States v. Fox, 94 U. S. 320, 24 U. S. (L. ed.) 192; 10 Am. & Eng. Enc. of Law (2d ed.) 1069; Illinois Cent. R. Co. v. Chicago, 141 Ill. 602, 30 N. E. 1044. 17 L. R. A. 530.

"Hence, it has been held that a particular property belonging to a particular citizen can be selected directly for the public use by legislative enactment. Anderson v. Turbeville, *supra;* Shoemaker v. United States, *supra;* Memphis State Line R. Co. v. Forest Hill Cemetery Co., *supra.* Public parks are for the benefit of the public, and property taken for such uses falls within a proper exercise of the power of eminent domain. Memphis v. Hastings, *supra;* Shoemaker v. United States, *supra;* United States v. Gettysburg Electric Ry. Co., *supra.*

"The Southern Railway's terminals and switch-yards are now devoted to a public use, so selected and set apart by proper legislative authority; and it is well settled that, before such property can be taken for another and inconsistent public use, there must be express or plainly implied legislative warrant for so doing. Memphis State Line R. Co. v. Forest Hill Cemetery Co., *supra;* 1 Lewis on Em. Dom. arts. 266, 269, 276; 15 Cyc. 612, 614. But the Legislature must have known that all of the property of the Southern Railway Company, including its switchyards in the city of Memphis, which is employed in commercial transportation, is devoted to a public use inconsist-

ent with the use of the same property for a public park; and therefore, when by the act in question, it authorized the city to acquire these yards for parks, it expressly authorized the taking for the other and inconsistent use. So we have a legislative selection of this particular property, already devoted to another and inconsistent public use, directly made by special enactment, which necessarily includes express authority to take it and devote it to the other and inconsistent use.

"That such a selection is not condemned by section 8 of article 1, section 21 of article 1, of the Fourteenth Amendment to the Constitution of the United States, follows naturally from what has been said heretofore respecting the origin, extent, and nature of the power of eminent domain. It exists outside and independent of the Constitution.

"The reasons which support such an act upon the part of the sovereign power are wholly dissimilar to the reasons which strike down arbitrary selections and classifications as between citizens. It does not require a reason for the selection of property for public uses other than the judgment of the sovereign power expressed in the legislative enactment which directs the taking. A law authorizing a particular person to borrow money at a rate of interest forbidden by law to all others, as in McKinney v. Memphis Overton Hotel Co., 12 Heisk. (Tenn.) 104; a law applying to a particular class of minors and the management of their estates, and not to others, as in Jones' Heirs v. Perry, 10 Yerg. (Tenn.) 60, 30 Am. Dec. 430; a law singling out a particular sheriff, and requiring a duty of him under a penalty

for failure to perform it, as in Alexandria v. Dearman, 2 Sneed (Tenn.) 104; a law providing that suits in which the venue has been changed may be moved back to the courts where they were instituted upon affidavits which could only be made by 'unconditional union men,' as in Brown v. Haywood, 4 Heisk. (Tenn.) 357; a law providing that cities having a certain population and over may sue without giving bond for cost, as in Memphis v. Fisher, 9 Baxt. (Tenn.) 240; a law which deprived lunatic intestates from transmitting their property to their heirs or distributees, as in Stratton Claimants v. Morris Claimants, 89 Tenn. 497, 15 S. W. 87, 12 L. R. A. 70; a law applying to counties of a certain population by the census of 1890, as in Sutton v. State, 96 Tenn. 696, 36 S. W. 697, 33 L. R. A. 589; a law which forbids a barber to keep his bathroom open on Sunday, and does not prohibit other owners of public baths from doing the same thing, as in Ragio v. State, 86 Tenn. 272, 6 S. W. 401; a law making it unlawful for a corporation to discharge an employee for voting or not voting at an election, which does not apply to any other citizen, as in State v. Nashville, C. & St. L. R. Co., 124 Tenn. 1, Ann. Cas. 1912D 805, 135 S. W. 773; a law which exempts the city of Memphis from liability for neglecting its public streets, as in Fleming v. Memphis, 126 Tenn. 331, 148 S. W. 1057, are each and all violative of the constitutional provisions last above referred to, and furnish typical examples of the application of those constitutional inhibitions against class legislation. The protection which the organic law affords to a citizen against arbitrary discrimination in favor of other citi-

zens, or a particular class of citizens arbitrarily selected, is the same thing in the Constitution which forbids the sovereign power to take the property of the citizen for private purposes at all, and which affords the guaranty of the equal protection of the laws. But it is obvious that the selection of a particular piece of property by the sovereign for public purposes falls within and is governed by an entirely different principle from that controlling the cases referred to. The power to take for public purposes necessarily includes the power to select that which is to be taken." (Pages 282-286.)

A pertinent case is *Kennebec Water District v. Waterville* (1902), 96 Me. 234, 52 Atl. 774, in which the court answered a contention similar to the one here made, as follows:

"III. The third section of the act incorporating the Kennebec Water District provides, that if any person sustaining damages and said corporation shall not mutually agree upon the sum to be paid therefor, such person may cause his damages to be ascertained in the same manner and under the same conditions, restrictions and limitations as are or may be prescribed in cases of damages by the laying out of highways. This gives to the owner of property taken the ultimate right upon appeal to have his damages assessed by a jury. Section five of the same act provides that if the trustees of the water district fail to agree with the Maine Water Company, the damages shall be assessed by appraisers to be appointed by the court upon a bill in equity to be instituted by the water district.

"It is claimed by the defense that the different tribunals thus provided for the assessment of damage is a violation of the Fourteenth Amendment of the Federal Constitution, which provides that no state 'shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' In the case at bar the act of incorporation does not deny to any person, or to the Maine Water Company, the equal protection of the laws. It provides to each person who sustains damages and to the Maine Water Company just compensation. There is no discrimination or inequality in that respect. No different rule is prescribed for the estimation of just compensation in case of individuals, and in case of the Maine Water Company. The act provides for a competent and impartial tribunal in each case with the right of the property owner to appear and be heard. We think that this is all that is required by the terms of the amendment to the Federal Constitution above referred to. The only difference as to the award of compensation is one of procedure. As has already been shown the Legislature has entire discretion to designate any impartial tribunal to assess compensation, whether jury, commissioners or appraisers. We perceive no reason for precluding the Legislature from prescribing in the same act for the assessment of compensation by different tribunals for different classes of property taken, nor are we aware of any decision of any court holding that the Legislature is so precluded. Ordinarily the compensation for tangible property taken may properly be determined by a jury; but when, as in the case at bar, the property and franchises of a

large corporation are taken for public uses, and the value, not only of tangible property, but of the franchise, rights, privileges and contracts are factors in determining the amount of compensation to be paid, the Legislature may well determine that commissioners or appraisers, the members of which have peculiar skill and experience in such matters, can, better than a jury, do exact justice to the corporation whose property has been condemned and taken.

"We are of the opinion that the act here in question by prescribing a different tribunal for fixing the amount of just compensation to the Maine Water Company than that prescribed for fixing the compensation to other parties is not 'without due process of law', and does not deny to any person or to the Maine Water Company, 'the equal protection of the laws', and is not repugnant to the Fourteenth Amendment of the Federal Constitution." (Pages 251, 252.)

See also, Missouri v. Lewis,[1] (1879) 101 U. S. 22, 25 L. Ed. 989.

So, also, and for the same reasons, the Legislature of the state of California has the undoubted power to regulate the mode of exercising the right of eminent domain. If the matters enumerated in the proviso of section 1241 are not determined by a two-thirds vote of a Board of Supervisors and a further hearing is allowed in court, this fact does not derogate in the least from the authority of a decision by a two-thirds vote made conclusive by the statute.

The reasoning of this court in *Cincinnati Street R. Co. v. Snell* (1904), 193 U. S. 30, 36, 24 S. Ct. 319, 48 L. Ed. 604, in which it was contended that the provision for a change of venue for local prejudice made by O. Rev. Stats., section 5030, where the opposite party is a corporation with more than fifty stockholders, having its principal place of business in the county in which the action is pending, without conferring an equal right on the corporation, violated the constitutional guaranty of the equal protection of the laws, is directly applicable here. The court reasoned thus:

> "The proposition to which the case reduces itself is therefore this: That although the protection of equal laws equally administered has been enjoyed, nevertheless there has been a denial of the equal protection of the law within the purview of the 14th Amendment, only because the state has allowed one person to seek one forum and has not allowed another person, asserted to be in the same class, to seek the same forum, although as to both persons the law has afforded a forum in which the same and equal laws are applicable and administered. But it is fundamental rights which the 14th Amendment safeguards, and not the mere forum which a state may see proper to designate for the enforcement and protection of such rights. Given, therefore, a condition where fundamental rights are equally protected and preserved, it is impossible to say that the rights which are thus protected and preserved have been de-

nied because the state has deemed best to provide for a trial in one forum or another. It is not, under any view, the mere tribunal into which a person is authorized to proceed by a state which determines whether the equal protection of the law has been afforded, but whether in the tribunals which the state has provided equal laws prevail.

"It follows that the mere direction of the state law that a cause, under given circumstances, shall be tried in one forum instead of another, or may be transferred when brought from one forum to another, can have no tendency to violate the guaranty of the equal protection of the laws where in both the forums equality of law governs and equality of administration prevails. In *Iowa C. R. Co. v. Iowa,* 160 U. S. 393, 40 L. Ed. 469, 16 Sup. Ct. Rep. 360, this court said:

" 'But it is clear that the 14th Amendment in no way undertakes to control the power of a state to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided. This being the case, it was obviously not a right, privilege or immunity of a citizen of the United States to have a controversy in the state court prosecuted or determined by one form of action instead of by another.'" (Pages 36, 37.)

The situation before this court in *Pittsburg etc. R. Co. v. Backus,* (1894), 154 U. S. 421, 14 S. Ct. 1114, 38 L. Ed. 1031, is particularly

analagous here. The facts appear in the statement of Mr. Justice Brewer as follows:

> "On March 6, 1891, the Legislature of the state of Indiana passed an act entitled 'An act concerning taxation, repealing all laws in conflict therewith, and declaring an emergency' (Laws 1891, pp. 199-291) which, expressly repealing 'all laws and parts of laws within the purview of this act,' provided in itself a complete and comprehensive system of taxation. By it all property of individuals and ordinary corporations was subject to valuation and assessment by county officers, while the assessment of railroad property was committed to a state board of tax commissioners, composed of the governor, secretary of state, auditor of state, and two appointees of the governor. To this board, in addition to the assessment of railroad property, was given the duty of equalizing the assessment of real estate throughout the state, as well as of entertaining appeals from the decisions of the several county boards." (Pages 421-2.)

The court held:

> "Equally fallacious is the contention that, because to the ordinary taxpayer there is allowed not merely one hearing before the county officials, but also a right of appeal with a second hearing before the state board, while only one hearing before the latter board is given to railroad companies in respect to their property, therefore the latter are denied the equal protection of the laws. If a single hearing is not due process, doubling it will not make it so,

> and the power of a state to make classifications in judicial or administrative proceedings carries with it the right to make such a classification as will give to parties belonging to one class two hearings before their rights are finally determined, and to parties belonging to a different class only a single hearing. Prior to the passage of the Court of Appeals Act by Congress, in 1891, a litigant in the Circuit Court, if the amount in dispute was less than $5000, was given but a single trial and in that court, while if the amount in dispute was over that sum the defeated party had a right to a second hearing and in this court. Did it ever enter into the thought of any one that such classification carried with it any denial of due process of law?" (P. 427.)

In *Kentucky R. R. Tax Cases* (1885), 115 U. S. 321, 6 S. Ct. 57, 29 L. Ed. 414, this court was considering a Kentucky statute providing for the assessment of railroad property in a different manner from property of other corporations. In stating and denying the contention of the plaintiffs in error, it was said:

> "The plaintiffs in error, however, did interpose a defense below, legitimate in itself, and arising under the Constitution of the United States, namely, that in the proceedings of the board of railroad commissioners, resulting in the valuation and assessment, under the Act of April 3, 1878, they were severally denied the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution. As

this defense was overruled by the Court of Appeals of Kentucky, another Federal question is presented which we are bound now to examine and decide.

"The discrimination against railroad companies and their property, which is the subject of complaint, as being unjust and unconstitutional, arises from the fact that, in the legislation of Kentucky on the subject, railroad property, though called real estate, is classed by itself as distinct from other real estate, such as farms and city lots, and subjected to different means and methods for ascertaining its value for purposes of taxation, and differing as well from those applied to the property of corporations chartered for other purposes, such as bridge, mining, street railway, manufacturing, gas and water companies. These latter report to the auditor the total cash value of their property, and pay into the treasury as a tax, upon each $100 of its value, a sum equal to the tax collected upon the same value of real estate; and their reports and valuations are treated as complete and perfect assessments, not subject to revision by any board or court, and conclusive upon the taxing officers.

"But there is nothing in the Constitution of Kentucky that requires taxes to be levied by a uniform method upon all descriptions of property. The whole matter is left to the discretion of the legislative power, and there is nothing to forbid the classification of property for purposes of taxation and the valuation of different classes by different methods. The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all the con-

stituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. There is no objection, therefore, to the discrimination made as between railroad companies and other corporations in the methods and instrumentalities by which the value of their property is ascertained. The different nature and uses of their property justify the discrimination in this respect which the discretion of the Legislature has seen fit to impose.

"So, the fact that the Legislature has chosen to call a railroad, for purposes of taxation, real estate, does not identify it with farming lands and town lots, in such a sense as imperatively to require the employment of the same machinery and methods for all, in the process of valuation for purposes of taxation. Calling them by the same name does not obliterate the essential differences between them, and accordingly, it is not insisted on in argument, as an objection to the system, that a railroad running through several counties is valued and taxed as a unit and by a special board organized for that purpose, while other real estate is valued in each county by assessors. The final point of objection seems to be reduced to this. In the case of ordinary real estate, it is said, when the assessor has made his valuation, it is submitted to a board of supervisors, who may change the valuation, but not so as to increase it, without notice to the taxpayer, and an opportunity for a formal hearing, upon testimony to be adduced under oath, and with a right of appeal on his part, first, to a county judge, and, again, if the amount of the tax is equal to fifty dollars, to the

Circuit Court. This is contrasted with the proceeding in the case of railroad property before the board of railroad commissioners, in which it is alleged there is no notice of an intended change in the valuation returned by the company, and no appeal allowed if it is increased.

"The discrimination, however, is apparent rather than real. An examination of the statutes shows, that the original valuation of the assessor, in case of ordinary real estate, is conclusive upon the taxpayer, no matter how unsatisfactory; and the appeal allowed is only from the action of the board of supervisors in case they undertake to increase the valuation made by the assessor. But in the case of railroad property, no board has authority to increase the original assessment made by the railroad commissioners, and there is, therefor, no case for an appeal similar to that of the owner of ordinary real estate.

"But were it otherwise, the objection would not be tenable. We have already decided that the mode of valuing railroad property for taxation under this statute is due process of law. That being so, the provision securing the equal protection of the laws does not require, in any case, an appeal, although it may be allowed in respect to other persons, differently situated. This was expressly decided by this court in the case of *Missouri v. Lewis*, 101 U. S. 22, 30. It was there said by Mr. Justice Bradley, delivering the opinion of the court and speaking to this point, that, 'the last restriction, as to the equal protection of the laws, is not violated by any diversity in the jurisdiction of the several courts as to subject-matter, amount, or finality of de-

> cision, if all persons within the territorial limits of their respective jurisdictions have an equal right, in like cases and under like circumstances, to resort to them for redress.' The right to classify railroad property, as a separate class, for purposes of taxation, grows out of the inherent nature of the property, and the discretion vested by the Constitution of the state in its Legislature, and necessarily involves the right, on its part, to devise and carry into effect a distinct scheme, with different tribunals, in the proceeding to value it. If such a scheme is due process of law, the details in which it differs from the mode of valuing other descriptions and classes of property cannot be considered as a denial of the equal protection of the laws." (Pp. 336-339.)

See also, the very late case of *Southern Railway Co., v. Watts* (Jan. 2, 1923), U. S. Adv. Ops. 1922-23, 199 in which this court said:

> "Differences in the machinery for assessment or equalization do not constitute a denial of equal protection of the laws." (P. 202.)

The right of eminent domain, as said in *People v. Smith* (1860), 21 N. Y. 595, 597, stands on the same ground with the power of taxation. Both are emanations of the law-making power. They are the attributes of political sovereignty, and differences in the machinery for the determination of necessity do not constitute a denial of equal protection of the laws.

It has been repeatedly held by this court that the fact that one person may be prosecuted by information while another may be prosecuted by indictment does not contravene the Fourteenth Amendment. (Hurtado v. Cal. (1883), 110 U. S. 516, 4 S. Ct. 111, 28 L. Ed. 232; *Maxwell v. Dow* (1899), 176 U. S. 581, 598, 20 S. Ct. 448, 44 L. Ed. 597.)

A law denying the right of an individual in all criminal cases, not capital, to have a jury composed of twelve jurors does not contravene the Fourteenth Amendment. (*Maxwell v. Dow* (1899), 176 U. S. 581, 598, 20 S. Ct. 448, 44 L. Ed. 597.) The court in this case said:

> "As was stated by Mr. Justice Brewer, in delivering the opinion of the court in *Brown v. New Jersey*, 175 U. S. 172, the state has full control over the procedure in its courts, both in civil and criminal cases, subject only to the qualification that such procedure must not work a denial of fundamental rights or conflict with specific and applicable provisions of the Federal Constitution. The legislation in question is not, in our opinion, open to either of these objections." (P. 605.)

The Fourteenth Amendment did not create new legal rights. It operates on the legal rights existing at its adoption. *U. S. v. Cruickshank* (1875), 92 U. S. 542, 554, 23 L. Ed. 588. Property owners never having had the legal right

to have the necessity for taking their property determined upon notice and hearing, or in any particular manner, the fact that one class may be granted that privilege by the Legislature does not deny to a class not granted the privilege the equal protection of the law.

In *Backus v. Fort Street Union Depot Co.* (1898), 169 U. S. 557, 568, 18 S. Ct. 445, 42 L. Ed. 853, it is said:

> "Neither can it be said that there is any fundamental right secured by the Constitution of the United States to have the questions of compensation and necessity both passed upon by one and the same jury. In many states the question of necessity is never submitted to the jury which passes upon the question of compensation. It is either settled affirmatively by the Legislature, or left to the judgment of the corporation invested with the right to take property by condemnation. The question of necessity is not one of a judicial character, but rather one for determination by the lawmaking branch of the government. *Mississippi & Rum River Boom Co. v. Patterson,* 98 U. S. 402, 406 (25: 206, 208); *United States v. Jones,* 109 U. S. 513, (27: 1015); *Cherokee Nation v. Southern Kansas Railway Company, supra.*" (Pp. 859.)

The assertion that because when the land is within the territorial limits of the political subdivisions the legislative body may, by four-fifths vote, conclusively determine the matters enum-

erated in the *proviso,* while when the land lies outside, such matters may not be so determined, plaintiffs in error are denied the equal protection of the law is fully answered by this court in *Gardner v. Mich* (1905), 199 U. S. 325, 26 S. Ct. 106, 50 L. Ed. 212, in this language:

> "The defendant further contends, as he contended in the Supreme Court of the state, that the act of the Michigan Legislature, creating the board of jury commissioners for Wayne county, in which the present trial occurred, denies to accused persons and other litigants in that county the equal protection of the laws. The ground of this contention is, that by the general laws of the state, the officers authorized to make and return the jury list were elected by the people in their several townships and in city wards (Const., Art. 11, Sec. 1; *People ex rel. Atty. Gen. v. Detroit,* 29 Mich. 108), and required that jurors should be of those who are assessed on the assessment roll; while, by the Wayne county jury law of 1893, as amended in 1895 (Pub. Acts. 1893, p. 337; *id.* 1895, p. 69), the jury lists are made up and returned by a board of seven jury commissioners, appointed by the governor, with the consent of the senate, and the names of persons to be returned need not appear on the assessment rolls. This difference between the general law relating to jury trials and the special law relating to Wayne county, it is said, constitutes a discrimination against the people of that county, and amounts to a denial to them

> of the equal protection of the law. This view does not commend itself to our judgment. It is fully met and shown not to be sound by the judgment in *Missouri v. Lewis* (*Bowman v. Lewis*), 101 U. S. 22, 31, 25 L. Ed. 989, where Mr. Justice Bradley, speaking for the court, and referring to the 14th Amendment, said:" (P. 333.)

The court then quotes at length from *Missouri v. Lewis.*

The rule that the Legislature may declare a finding of a subordinate tribunal conclusive evidence of any fact which it need not have required in the first place, recognized in the cases referred to by counsel for plaintiffs in error (Brief, Plaintiffs in Error, p. 44) is directly applicable here. The authorities already quoted demonstrate that the Legislature may conclusively determine the matters enumerated in the *proviso* of section 1241 of the California Code of Civil Procedure by statutory enactment, without notice or hearing to the property owner. It may, therefore, declare that the finding of such facts by a subordinate tribunal shall be conclusive evidence of such facts.

The necessity for a public improvement is not a matter in which the individual citizen or property owner has an interest different from or greater in degree than the public at large. Such necessity is a question of general public policy to be determined by the public's agent, the Leg-

islature, or its subordinate tribunal. It is an act of governmental administration. No authority has been produced and none can be found holding that a property owner must be given notice or hearing on whether an act of public administration shall be done. No authority can be found holding that the performance of an act of public administration in one manner under certain circumstances and in another manner under other circumstances constitutes a denial of the equal protection of the law.

The Classification Made Is Not Arbitrary or Unreasonable.

If it should be conceded, for the purpose of argument, that the Fourteenth Amendment limits the Legislature in prescribing the mode in which the matters enumerated in the *proviso* of section 1241 shall be determined, nevertheless, the statute under consideration does not deny the equal protection of the law.

It is elementary that the Fourteenth Amendment to the Constitution does not prohibit a state from classifying persons or property for purposes of legislation. A classification, to be obnoxious, must be arbitrary and destitute of reasonable basis. If any state of facts can be conceived that would sustain a classification, it is not arbitrary. It makes no difference that the facts may be disputed or their effect op-

posed by argument and opinion of serious strength. It is not within the competency of the courts to arbitrate in such contrariety. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis but is essentially arbitrary. The inhibition that no state shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject for discriminatory and hostile legislation. (*Rast v. Van Deman etc. Co.* (1916), 240 U. S. 342, 36 S. Ct. 370, 60 L. Ed. 679, Ann. Cas. 1917B, 421; *Lindsley v. Natural etc. Co.* (1911), 220 U. S. 61, 31 S. Ct. 337, 55 L. Ed. 369, Ann. Cas. 1912C 160; *Heisler v. Thomas Colliery Co.* (Nov. 27, 1922), U. S. Adv. Ops. 1922-1923, p. 119.)

Testing the statute under consideration by these principles, can it be said that the classification made is arbitrary and destitute of reasonable basis, or that one class is singled out for descriminatory and hostile legislation? The Legislature says that when the necessity for the taking is so obvious as to be recognized by a two-thirds vote of the legislative body of the political subdivision, the determination of such necessity by a two-thirds vote of that body is conclusive. It also says that when the necessity for the taking is not so obvious as to be recog-

nized by two-thirds of the legislative body of the political subdivision, the necessity shall be determined in a judicial proceeding in which the property owner shall be heard. The legislative body of a political subdivision of the state is presumed to have intimate knowledge of local conditions within the subdivision. Such knowledge may be derived from the individual personal knowledge of its members, or may be derived from statements made to it or to its members, either official or unofficially. Men are elected members of such bodies because of their familiarity with the conditions and wants of the subdivision. Information possessed by one member is, of course, at the disposal of all of the others. The statute merely says that when two-thirds of the members of such a body, exercising the knowledge of local conditions which they have, say that a public improvement is needed and that certain land must be acquired for that improvement, such determination is conclusive. Who is in any better position to determine such necessity than two-thirds of such a body?

Where citizens living in some part of the political subdivision desire a public improvement in that particular section but the necessity therefor is not so apparent that two-thirds of the legislative body is satisfied of it, the Legislature says such necessity shall be determined

in a judicial proceeding and the property owner shall have an opportunity of contesting it.

Is this classification so unreasonable and arbitrary as to be obnoxious? On the contrary, is it not a most reasonable and fair mode of determining the necessity for a public improvement?

The same argument applies to a taking outside of the territorial limits of the political subdivision. In such cases the necessity is determined in a judicial proceeding, irrespective of the views of the legislative body. This, for the reason that the legislative body has no interest in, is not presumed to know, and usually does not know conditions outside of its own political subdivision. There is nothing, we submit, unreasonable or arbitarary in such classification.

Whether the statute be considered as one prescribing the mode of exercising the sovereign power of eminent domain which is not subject to any constitutional limitation except that the purpose be public and compensation be made or tendered, or whether it is necessary that the Legislature observe reasonable limitations in exercising such power, the statute does not deny to any person the equal protection of the law.

FOURTH.

The Striking Out of the Special Defenses Did Not Prevent Plaintiffs in Error From Raising the Question Whether the Land Sought to Be Condemned Was Being Taken for a Public Use Authorized by Law.

The apparent theory of plaintiffs in error in urging that the trial court erred in striking the special defense set forth in the assignment of errors is that they were thereby denied the right of proving that the taking was not for a public use.

The record clearly shows that they were not denied this right. Each and every matter alleged in this special separate defense was an issue before the court under the allegations of the complaint and the denials and separate defenses of the amended answers which remained standing after this separate special defense was stricken out. Plaintiffs in error introduced a vast mass of evidence for the purpose of proving that the use was not a public one. Defendant in error in turn introduced a vast deal of evidence for the purpose of proving that the proposed use was public. The court found that the use for which the property was to be taken was a public use and the District Court of Ap-

peal upheld this finding. The evidence referred to is scattered throughout the transcript of the record in such fashion that it is impossible to directly refer to it. In view of the fact that the District Court of Appeal made this same statement, we trust we may be pardoned in not taking up the time of the court with unlimited references to the transcript. [Tr. Vol. III, fols. 4267, 4278-4280.]

We fail to see how under this condition of the record the due process of law clause of the Fourteenth Amendment was violated by the action of the court in striking out these special defenses. Plaintiffs in error were not denied any right under the Fourteenth Amendment.

It is to be observed that counsel do not say that the evidence demonstrates that the proposed taking was for a private use, nor do they say that they were denied the right to prove that the use was not public nor that defendant in error did not prove that the use was public. Their sole contention is that the mere striking from the pleadings of their special defenses denied their clients due process of law. Assuredly, if they were given every latitude in an attempt to prove that the use was private they are in no position to complain merely because their attempt was unsuccessful.

The District Court of Appeal, referring to these separate defenses, said:

> "While this contention is fully answered by the fact that the resolution was conclusive evidence of the taking being necessary, nevertheless, conceding such theory warranted by the alleged facts, it appears that every material issue tendered by the so-called separate defense was not only raised by the complaint and the answers thereto, but that in the trial thereof defendant, without objection or restriction, was accorded every opportunity, of which it availed itself, in offering evidence touching every matter contained in the pleading so stricken out by order of the court. There was no error in the ruling, but, conceding as much, it is impossible to perceive how defendants, under the circumstances, could have suffered any prejudice by reason thereof." (200 Pac., pp. 31, 32.)

The state court having found the facts to be as stated in this quotation, this court will accept such statement as true, for in cases of this kind coming from the Supreme Court of a state, questions of fact passed upon in the state court are not here open to review. (*Backus v. Fort Street Union Depot Co.* (1898), 169 U. S. 557, 18 S. Ct. 445, 42 L. Ed. 853.)

An examination of the special defenses stricken out will disclose that the sole issues raised by them were: The necessity for the highway; whether the purpose constituted a public use; and that the taking deprived plaintiff in error

of their property without due process of law and denied them the equal protection of the laws. Under the complaint, the answers and the separate defenses remaining after these were stricken, each of these matters was an issue before the court for hearing and determination. The questions of necessity and of public use were issues under paragraphs III and IV of the complaint, paragraph III of the amended answers of May K. Rindge and Rindge Company, and the special defense which remained in the pleadings. [Tr. Vol. I, fols. 48-50, 288-291, 324-327, 301-302, 337-338.] The issues, whether plaintiffs in error were deprived of their property without due process of law and whether they were denied the equal protection of the laws, were raised by a special defense which remained standing in the amended answers and was not stricken out. [Tr. Vol. I, fols. 302-303, 390-395, 405.]

We have demonstrated, we believe, that the striking of the special defenses set forth in the assignment of errors did not deprive plaintiffs in error of the right to show that the use for which the property was to be taken was not public, but, on the contrary, that they were accorded the widest latitude in such attempt. There is therefore no basis for their contention that they were denied due process of law in this behalf.

THE PROPERTY WAS TAKEN FOR A PUBLIC USE.

The property was taken for a public highway. It does not require statutory authority to demonstrate that a public highway is a public use. However, the Code of Civil Procedure of California, section 1238, provides,

> "Uses for which eminent domain may be exercised. Subject to the provisions of this title the right of eminent domain may be exercised in behalf of the following public uses: * * * 3. * * * roads, highways, bridges, streets and alleys, * * *."

That the taking of the particular public highway in question is for a public use cannot be seriously controverted. The trial court so found. [Tr. Vol. 1, fols. 390, 402-409, 595-603.] The District Court of Appeal upheld these findings. Under these circumstances what is the attitude of this court in determining whether the taking is for a public use? It is convincingly stated in *Hairston v. Danville & W. R. Co.* (1907), 208 U. S. 598, 28 S. Ct. 331, 52 L. Ed. 637, a proceeding by a railroad company for condemnation of land for a spur track, in this language:

> "The condemnation of land in this case has been held by the courts of Virginia to be authorized by the Constitution and laws of that state, and we have no right to review that aspect of the decision. The

law of Virginia permits no exercise of the right of eminent domain except for public uses. Fallsburg Power & Mfg. Co. v. Alexander, 101 Va. 98, 61 L. R. A. 129, 99 Am. St. Rep. 855, 43 S. E. 194; Dice v. Sherman (Va.), 59 S. E. 388. Therefore it must be assumed that this taking was held to be for public uses, although there was no specific finding of the fact, but only a general judgment of condemnation. The plaintiff in error, however, insists that the record in this case, which includes all the evidence, shows, unmistakably, that the taking was for private uses, and that the claim by the railway company, that the spur track was designed in part for public uses, is no better than a colorable pretense. We assume that, if the condemnation was for private uses, it is forbidden by the 14th Amendment. * * * But when we come to inquire what are public uses for which the right of compulsory taking may be employed, and what are private uses for which the right is forbidden, we find no agreement, either in reasoning or conclusion. The one and only principle in which all courts seem to agree is that the nature of the uses, whether public or private, is ultimately a judicial question. The determination of this question by the courts has been influenced in the different states by considerations touching the resources, the capacity of the soil, the relative importance of industries to the general public welfare, and the long-established methods and habits of the people. In all these respects conditions vary so much in the states and territories of the Union that different results might well be expected. Some cases illustrative of the

tendency of local conditions to affect the judgment of courts are Hays v. Risher, 32 Pa. 169; Boston & R. Mill Corp. v. Newman, 12 Pick 467, 23 Am. Dec. 622 (Conf. Lowell v. Boston, 111 Mass. 454, 15 Am. Rep. 39); Turner v. Nye, 154 Mass. 579, 14 L. R. A. 487, 28 N. E. 1048; *Ex parte* Bacot, 36 S. C. 125, 16 L. R. A. 586, 16 S. E. 204; Dayton Gold & S. Min. Co. v. Seawell, 11 Nev. 394; Hand Gold Min. Co. v. Parker, 59 Ga. 419; Head v. Amoskeag Mfg. Co., 113 U. S. 9, 28 L. Ed. 889, 5 Sup. Ct. Rep. 441; Clark v. Nash, 198 U. S. 361, 49 L. Ed. 1085, 25 Sup. Ct. Rep. 676; Strickley v. Highland Boy Gold Min. Co., *supra;* Otis Co. v. Ludlow Mfg. Co., 201 U. S. 140, 50 L. Ed. 696, 26 Sup. Ct. Rep. 353. The propriety of keeping in view by this court, while enforcing the 14th Amendment, the diversity of local conditions, and of regarding with great respect the judgments of the state courts upon what should be deemed public uses in that state, is expressed, justified, and acted upon in Fallbrook Irrig. District v. Bradley; Clark v. Nash; and Strickley v. Highland Boy Gold Min. Co.—*ubi supra.* What was said in these cases need not be repeated here. *No case is recalled where this court has condemned, as a violation of the 14th Amendment, a taking upheld by the state court as a taking for public uses in conformity with its laws.* In Missouri P. R. Co. v. Nebraska, *ubi supra,* it was pointed out (p. 416) that the taking in that case was not held by the state court to be for public uses. We must not be understood as saying that cases may not arise where this court would decline to follow the state courts in their determination of the uses

for which land could be taken by the right of eminent domain. The cases cited, however, show how greatly we have deferred to the opinions of the state courts on this subject, which so closely concerns the welfare of their people. We have found nothing in the Federal Constitution which prevents the condemnation by one person for his individual use of a right of way over the land of another for the construction of an irrigation ditch; of a right of way over the land of another for an aerial bucket line; or the right to flow the land of another by the erection of a dam. It remains for the future to disclose what cases, if any, of taking for uses which the State Constitution, law, and court approve will be held to be forbidden by the 14th Amendment to the Constitution of the United States." (Italics ours.) (Pp. 605-607.)

In determining whether a particular use is public, this court stated the rule in *U. S. v. Gettysburg Electric R. Co.* (1895), 160 U. S. 668, 40 L. Ed. 576, as follows:

"In these Acts of Congress and the joint resolution the intended use of this land is plainly set forth. It is stated in the 2d volume of Judge Dillon's work on Municipal Corporations (4th Ed.), Sec. 600, that when the Legislature has declared the use or purpose to be a public one, its judgment will be respected by the courts, unless the use be palpably without reasonable foundation. Many authorities are cited in the note, and, indeed, the rule commends itself as a rational and proper one." (P. 680.)

Plaintiffs in error have presented nothing indicating that the highway in question is not a public use.

In *Shoemaker v. U. S.* (1892), 147 U. S. 282, 298, 13 S. Ct. 361, 37 L. Ed. 170, a proceeding to ascertain the compensation to be paid property owners for lands taken for a public park in the District of Columbia under an Act of Congress, this court, after citing cases said:

> "In these and many other cases it was, either directly or in effect, held that land taken in a city for public parks and squares, by authority of law, whether advantageous to the public for recreation, health, or business, is taken for a public use.
>
> "In the case cited from the Missouri reports, where the Legislature had authorized the appropriation of land for a public park for the benefit of the inhabitants of St. Louis county, situated in the eastern portion of the county, near to and outside of the corporate limits of the city of St. Louis, it was held that this was a public use, notwithstanding the fact that it would be chiefly beneficial to the inhabitants of the city, and that the act was not unconstitutional.
>
> "The adjudicated cases likewise establish the proposition that while the courts have power to determine whether the use for which private property is authorized by the Legislature to be taken, is in fact a public use, yet, if this question is decided in the affirmative, the judicial function is ex-

> hausted; that the extent to which such property shall be taken for such use rests wholly in the legislative discretion, subject only to the restraint that just compensation must be made." (Pp. 297-8.)

See also:

> *Mt. Vernon-Woodbury Cotton Duck Co. v. Alabama Interstate Power Co.* (1915), 240 U. S. 30, 32, 36 S. Ct. 234, 60 L. Ed. 507.

It is not essential that the entire community, or even any considerable portion thereof should directly enjoy or participate in an improvement in order to constitute a public use. (*Fallbrook Irrigation District v. Bradley* (1896), 164 U. S. 112, 17 S. Ct. 56, 41 L. Ed. 369.)

That plaintiffs in error were afforded every opportunity of showing that the property was not taken for a public use and, further, that the property was taken for a public use, has been demonstrated. There is, therefore, no basis for the contention that the use is not public or that plaintiffs in error were denied any right under the Federal Constitution by reason of the striking out of the special defenses.

Conclusion.

We cannot close this brief without remarking that these are among the many cases which should never have come before this court. If the constitutional questions raised were new and had never been before this court for adjudication there might be some justification for calling upon the time of this court for their decision but, as pointed out herein, they have been adjudicated many times by this court and by the courts of last resort of nearly all of the states adversely to the contention of plaintiffs in error. Particularly is the above true in view of the fact that the cases were tried on the theory that the statute in question was unconstitutional and void.

To recapitulate:

1. This court is without jurisdiction for the reason that a decision of the constitutional questions was rendered unnecessary by the view taken of the case by the learned District Court of Appeal.

2. California Code of Civil Procedure, section 1241, is not repugnant to the due process clause of the Fourteenth Amendment for the reason that a property owner in a proceeding to take his property for public use is not entitled to notice or hearing on the determination of (a) the necessity for the proposed improve-

ment, (b) the necessity of the particular property therefor, and (c) the location of the improvement.

3. Plaintiffs in error were not denied the equal protection of the law for the reason that (a) the mode of exercising the right of eminent domain not subject to constitutional limitation other than that the purpose be public and compensation made or tendered, (b) the classification made by section 1241 is not arbitrary or unreasonable, (c) plaintiffs in error were accorded the privilege which they assert the statute denies, that of notice and hearing on the questions enumerated in the *proviso* of section 1241.

4. A striking out of the special separate defenses did not prevent plaintiffs in error from introducing testimony for the purpose of proving that the use was not public.

There is, therefore, no ground for reversal and the judgment in each case should be affirmed.

Most respectfully submitted,

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RUNDGE COMPANY ET AL. *v.* COUNTY OF LOS ANGELES.

ERROR TO THE DISTRICT COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE, OF THE STATE OF CALIFORNIA.

No. 237. Argued April 26, 1923.—Decided June 11, 1923.

1. Whether a use for which private property is taken is public or private is a judicial question the determination of which is influenced by local conditions; and this Court, while enforcing the Fourteenth Amendment, should keep in view the diversity of such conditions, and regard with great respect the judgments of state courts upon what should be deemed public uses. P. 705.

2. It is not essential that the entire community, or even a considerable portion, should directly enjoy an improvement in order to constitute a public use. P. 706.

3. A taking of land for a highway extension is a taking for a public use, even though the extension lie wholly within the tract of a single landowner, and terminate at his boundaries and connect with no public road save at its beginning, if it be susceptible of present use not only by those gaining access from the highway but by persons living on or adjacent to the tract with access by private ways, and of future use by those living beyond its terminus, through future road construction. P. 706.

4. A highway may be legally laid out extending to a state or county line even though there be at the time no connecting highway in

the adjoining State or county, in reasonable anticipation of future connections and future public use. P. 707.

5. Public use of a road is not limited to its use as a mere business necessity or ordinary convenience, but includes its use as a scenic highway, for the public enjoyment, recreation and health. P. 707.

6. The necessity for appropriating private property for a public use is a legislative question which may be determined by a municipality to which the legislature has delegated the power; and the Fourteenth Amendment does not entitle the owner to a hearing before the determination is made. P. 708.

58 Cal. App. 166, affirmed.

ERROR to judgments of the District Court of Appeal of California, which affirmed judgments condemning private lands as county highways.

Mr. Edward Stafford and *Mr. Nathan Newby*, with whom *Mr. W. H. Anderson*, *Mr. J. A. Anderson* and *Mr. Grant Jackson* were on the briefs, for plaintiffs in error.

Mr. Paul Vallee, with whom *Mr. A. J. Hill* was on the brief, for defendant in error.

MR. JUSTICE SANFORD delivered the opinion of the Court.

This record includes two cases which were tried together in the state courts and have been heard together here.

The writs of error are brought to review judgments of the District Court of Appeal affirming judgments of the Superior Court of Los Angeles County, California, condemning lands of the plaintiffs in error for use by the County as public highways; which they insist have deprived them of their property without due process of law and in violation of the Fourteenth Amendment.[1]

[1] After these judgments of affirmance petitions to have the cases heard and determined by the Supreme Court of California were denied by that court.

The two fundamental questions involved are whether the uses for which these lands have been taken are public uses authorized by law; and whether the taking was necessary to such uses.

Section 1241 of the California Code of Civil Procedure includes "highways" among the "public uses" for which the right of eminent domain may be exercised. Section 1241, as amended in 1913, provides that before property can be taken it must appear that the use to which it is to be applied is one authorized by law and that the taking is necessary to such use; provided, *inter alia*, that when the legislative body of a county has, by resolution adopted by vote of two-thirds of its members, found and determined that the public interest and necessity require the construction by the county of any proposed public improvement located within its limits and that designated property is necessary therefor, such resolution shall be "conclusive evidence" of the public necessity for such improvement, that such property is necessary therefor, and that such improvement is located in the manner most compatible with the greatest public good and the least private injury. Stats. 1913, p. 549.

The plaintiffs in error are the owners of a large tract of land lying on the shore of the Pacific Ocean, known as the Malibu Ranch, extending in an easterly and westerly direction about twenty-two miles and varying in width from one-half mile to one and one-half miles. It lies at the base of a high and rugged mountain range which parallels the shore at a distance of from three to four miles, its northern line extending along the slope and foothills of this mountain range, and is traversed by many ridges and intervening canyons leading from the mountains toward the shore. It lies about ten miles west of Santa Monica, one of the principal cities of Los Angeles County, situated on the coast to the southwest of the City of Los Angeles, and is mainly in Los Angeles County, but extends

about a mile and a half into Ventura County, the adjoining county on the west. It is traversed lengthwise by a private road of the ranch owners which was formerly used by farmers and settlers living north of the ranch on the slope of the mountains and west of the ranch in Ventura County, but which has been for several years closed by the ranch owners to the public.[2]

In 1916 and 1917 the Board of Supervisors, the legislative body of Los Angeles County, without notice to the ranch owners, adopted, by the required vote, two resolutions declaring that the public interest and necessity required the construction of the two highways now in controversy "for public highway purposes" and that it was necessary for such "public uses" that the lands included therein be acquired by the county; and directing that condemnation proceedings be instituted for such purposes. One of these proposed highways, which is known in the record as the "main road," commences at the eastern boundary of the ranch, where it connects with and forms a continuation of a much traveled public county highway running along the shore of the ocean from Santa Monica, and extends lengthwise through the ranch in a westerly direction to the Ventura County line, where it terminates within the boundaries of the ranch. The other is a branch from this main road, extending to the northern boundary of the ranch, where it terminates. There are no connecting public roads either at the western termination of the main road or the northern termination of the branch road.

These condemnation proceedings were thereupon instituted in the Superior Court of the County. They were

[2] There has been much litigation between the ranch owners and the county and federal authorities as to the public use of roads and ways across this ranch, in which, prior to these proceedings, the ranch owners have been successful. In this litigation are *United States* v. *Rindge* (D. C.), 208 Fed. 611, and *People* v. *Rindge*, 174 Cal. 743.

vigorously resisted by the ranch owners, who denied the County's right of condemnation. Certain special defenses which they interposed, alleging that the main road would furnish no way of necessity or convenience for public use or travel, were stricken out by the court. Upon a preliminary trial as to the right of condemnation, the trial judge, after the resolutions of the Board had been introduced in evidence by the County, ruled that while they were not conclusive evidence of the matters specified in the proviso to § 1241 of the Code, they were *prima facie* evidence thereof. And the ranch owners then, without objection or limitation, introduced a large mass of evidence in support of all of their defenses, including the matters which had been alleged in the special defenses that had been stricken out; and a large mass of rebuttal evidence was then introduced by the County; the testimony on both sides relating to all the matters which had been or now are in issue in the cases.

The trial judge reviewed the evidence, and, manifestly without reference to any presumption arising under his ruling as to the *prima facie* evidence furnished by the resolutions, decided all the questions submitted in favor of the County: and made specific findings that the public interest and necessity required the acquisition of these public highways; that the use to which they were to be applied was authorized by law; that they would afford accommodation to the traveling public; and that they were located as required. Thereafter, the amount of landowners' compensation and damages having been determined by a jury—as to which no question is made—judgments condemning these lands for public highways were entered.

On appeals taken by the ranch owners the District Court of Appeal held that the taking of the property for these highways was for a public use; that the proviso to § 1241 of the Code was not obnoxious to any provision of

the State or Federal Constitutions, and under it the resolutions were conclusive evidence of the matters specified; that in any event the ranch owners had not been prejudiced by the rulings of the trial court as to the effect of this proviso as they had been permitted to introduce full and complete evidence on these subjects; and that they had not been prejudiced by the striking out of their special defenses not only because the resolutions were conclusive evidence that the taking was necessary, but also because every material issue tendered by these special defenses was otherwise raised by the pleadings and they had been permitted to offer evidence touching every matter contained therein; and it thereupon sustained the findings of the trial court and affirmed the judgments of condemnation. *Los Angeles County* v. *Rindge Co.*, 53 Cal. App. 166.

The ranch owners urge here, in substance, That the use for which their property was taken was not a public use authorized by law, and their special defenses raising this question as to the main road were erroneously stricken out; that their property was taken without any public necessity, and the proviso to § 1241 of the Code purporting to make the resolutions conclusive evidence thereof being in violation of the state constitution and of the Fourteenth Amendment and constituting neither conclusive nor *prima facie* evidence, the burden of disproving this public use was erroneously cast upon them; and that in consequence the judgments of condemnation deprived them of their property in violation of the due process and equal protection clauses of the Fourteenth Amendment.

1. *Authorized public use.* The nature of a use, whether public or private, is ultimately a judicial question. However, the determination of this question is influenced by local conditions; and this Court, while enforcing the Fourteenth Amendment, should keep in

view the diversity of such conditions and regard with great respect the judgments of state courts upon what should be deemed public uses in any State. *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112, 158, 160; *Hairston* v. *Danville Railway*, 208 U. S. 598, 606, 607. That a taking of property for a highway is a taking for public use has been universally recognized, from time immemorial. The California Code specifically declares "highways" to be "public uses" for which the right of eminent domain may be exercised. Here, the Board of Supervisors, familiar with local conditions, has declared these highways to be for public uses; and the local and appellate state courts have likewise held them to be for public uses authorized by law.

The ranch owners concede that a genuine highway, in fact adapted as a way of convenience or necessity for public use and travel, is a public use. Their real contention is that these particular roads, while called highways, are "highways" in name merely, that is, that they are shams under the name of public improvements, which cannot, in fact, furnish ways of convenience or necessity to the traveling public. This argument is based upon the fact that they extend through the ranch alone, the main road terminating within its boundaries, and connect with no other public roads at their western and northern ends. These roads will, however, be open to the general public to such extent as it can and may use them. The people to the eastward in Santa Monica, Los Angeles and other cities will have access to them and to the people living on the ranch through the connecting road from Santa Monica. The people living on the ranch will have egress over them. The people living north of the terminus of the crossroad, who now have no adequate outlet, will have access to it through private roads and ways and may then travel over these two roads to Los Angeles and other cities for marketing produce and other purposes; and the

people in these cities will have reciprocal access to them for purposes of trade and otherwise. It is not essential that the entire community, nor even any considerable portion, should directly enjoy or participate in any improvement in order to constitute a public use. *Fallbrook Irrigation District* v. *Bradley, supra,* p. 161. In like manner, if Ventura County should hereafter extend the main road to the western end of the ranch the people living beyond it, who now have no practical outlet, would be furnished a similar means of egress, with reciprocal ingress to them by the people living in the cities to the east. A highway can be legally laid out terminating at a state line even though there be no connecting highway in the adjoining State and no definite official action has been taken to establish such connecting highway; otherwise great embarrassment and difficulty would be experienced in establishing highways across state lines. *Rice* v. *Rindge,* 53 N. H. 530, 531. So, as to county highways. Public road systems, it is manifest, must frequently be constructed in instalments, especially where adjoining counties are involved. In determining whether the taking of property is necessary for public use not only the present demands of the public, but those which may be fairly anticipated in the future, may be considered. *Central Pacific Railway* v. *Feldman,* 152 Cal. 303, 309.

But aside from these considerations, these roads, especially the main road, through its connection with the public road coming along the shore from Santa Monica, will afford a highway for persons desiring to travel along the shore to the county line, with a view of the ocean on the one side, and of the mountain range on the other, constituting, as stated by the trial judge, a scenic highway of great beauty. Public uses are not limited, in the modern view, to matters of mere business necessity and ordinary convenience, but may extend to matters of public health, recreation and enjoyment. Thus, the con-

demnation of lands for public parks is now universally recognized as a taking for public use. *Shoemaker* v. *United States*, 147 U. S. 282, 297. A road need not be for a purpose of business to create a public exigency; air, exercise and recreation are important to the general health and welfare; pleasure travel may be accommodated as well as business travel; and highways may be condemned to places of pleasing natural scenery. *Higginson* v. *Nahant*, 11 Allen (Mass.) 530, 536. The Riverside Drive in New York is as essentially a highway for public use as Broadway, the Speedway in this city, as Pennsylvania Avenue. And manifestly, in these days of general public travel in motor cars for health and recreation, such a highway as this, extending for more than twenty miles along the shores of the Pacific at the base of a range of mountains, must be regarded as a public use.

For these reasons we conclude that these highways will, as found by the trial judge, afford accommodation to the traveling public, and that the taking of land for them is a taking for a public use authorized by the laws of California.

The ranch owners were not prejudiced by the action of the trial court in striking out their special defenses in this behalf, since, under the general issues, they were entitled, as held by the District Court of Appeal, and were in fact permitted, to introduce all their evidence bearing upon this question.

2. *Public necessity for the taking.* We necessarily accept, as a matter of state law, the holding of the District Court of Appeal that the proviso to § 1241 of the Code made the resolutions of the Board of Supervisors conclusive evidence as to the necessity of taking these particular highways and the other matters therein specified. So construed it was held by that court not to be objectionable to any provision of the State or Federal Constitutions. By this we are controlled so far as the provisions

of the state constitution are concerned. *Fallbrook Irrigation District* v. *Bradley*, *supra*, p. 155; *Georgia Railway* v. *Decatur*, *ante*, 432. And so construed this statute is not in conflict with the Fourteenth Amendment, either because it fails to provide for a hearing by the landowners before such resolution is adopted, or otherwise. The necessity for appropriating private property for public use is not a judicial question. This power resides in the legislature, and may either be exercised by the legislature or delegated by it to public officers. "Where the intended use is public, the necessity and expediency of the taking may be determined by such agency and in such mode as the State may designate. They are legislative questions, no matter who may be charged with their decision, and a hearing thereon is not essential to due process in the sense of the Fourteenth Amendment." *Bragg* v. *Weaver*, 251 U. S. 57, 58. "That the necessity and expediency of taking property for public use is a legislative and not a judicial question is not open to discussion. . . . Neither is it any longer open to question in this Court that the legislature may confer upon a municipality the authority to determine such necessity for itself. . . . The question is purely political, does not require a hearing, and is not the subject of judicial inquiry." *Joslin Mfg. Co.* v. *Providence*, *ante*, 668. And clearly, the fact that the resolutions are made conclusive evidence by the statute only when adopted by a two-thirds vote, and as applied to an improvement lying within the county, does not constitute an unjust or unreasonable classification.

And since the resolutions were conclusive evidence as to the necessity for the taking of these public highways, the ranch owners were not prejudiced by the ruling of the trial judge which treated them as *prima facie* evidence merely and allowed them full opportunity to introduce their evidence upon the subject. A litigant can

be heard to question the validity of a statute only when and in so far as it is applied to his disadvantage. *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, 289.

We therefore conclude that the property of the ranch owners has been taken for highways constituting a public use authorized by law, and upon a public necessity for the taking duly established, and that they have not been deprived of their property in violation of the Fourteenth Amendment. The judgments of the District Court of Appeal are accordingly

Affirmed.

MR. JUSTICE SUTHERLAND took no part in the consideration or decision of this case.

MILHEIM ET AL. *v.* MOFFAT TUNNEL IMPROVE-